S. Hrg. 99-553

MOTOR FUEL SALES COMPETITION IMPROVEMENT ACT OF 1985

HEARING

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1140

A BILL TO AMEND THE ANTITRUST LAWS IN ORDER TO PRESERVE AND PROMOTE WHOLESALE AND RETAIL COMPETITION IN THE RETAIL GASOLINE MARKET AND TO PROTECT THE MOTORING SAFETY OF THE AMERICAN PUBLIC

OCTOBER 9, 1985

Serial No. J-99-62

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
57-560 O
WASHINGTON : 1986

5521-51

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MOTOR FUEL SALES COMPETITION IMPROVEMENT ACT OF 1985

WEDNESDAY, OCTOBER 9, 1985

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 9:44 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Metzenbaum, McConnell, Grassley, and Specter.

Staff present: Kenneth Starling, antitrust counsel; Victor Maddox, counsel; and Eddie Correia, minority counsel.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

Today we are meeting to hear testimony on S. 1140, the Motor Fuel Sales Competition Improvement Act. This bill addresses the concern over the reduction in the number of independent service stations since the 1970's.

Independent service stations are small businesses employing many people. Independent dealers have a personal interest in the survival of independent service stations, and the Nation as a whole has an interest in fostering and preserving opportunities for small independent business.

Congress has long been interested in the state of competition in the retail gasoline market. This committee has held numerous hearings on gasoline marketing, including hearings on bills similar to the one before us, in 1981 and 1984. The committee favorably reported a bill similar to the one before us, in 1981.

With the advent of oil decontrol and the recent shift from gasoline shortages to oversupply, market conditions have changed substantially. There has been an increase in the volume of gasoline sold through refiner-operated stations and a reduction in the number of lessee-dealers.

The dealers charge that they are being driven out of the market by high rents and predatory pricing by their suppliers who operate competing service stations. The refiners explain that the current trends in gasoline marketing are dictated by changes in consumer demand, the presence of abundant supplies, and perhaps the previous overexpansion of retail outlets.

The bill before us proposes certain restructuring of the petroleum marketing industry along lines already embodied in certain

State laws and in certain supply contracts. The bill is a complex piece of legislation affecting a complex industry and it raises a number of serious questions. It is the responsibility of the committee to hear all points of view.

We have a number of witnesses to give us an overview of all sides of the issues involved in this legislation and we look forward to their testimony. We will begin with the administration views, then hear from a panel of dealers, followed by a panel of oil industry representatives. After that, we will hear from a panel of experts.

Now, ladies and gentlemen, I have got several committees going on this morning and I will stay for a few minutes and then I will turn this matter over to the ranking Republican who may be here, and if for any reason they have to leave, I will appoint Senator Metzenbaum to carry on the hearing.

Senator McConnell, do you have a statement you would like to make?

Senator McConnell. Mr. Chairman, I would just like to submit for the record an opening statement and not delay the proceedings any further.

[Prepared statement follows:]

Prepared Statement of Senator Mitch McConnell

Mr. Chairman, I'm pleased to be here to hear the testimony of this distinguished panel of witnesses on the subject of retail divorcement and open supply marketing in the retail motor fuel market. You are to be commended for your leadership in bringing this issue once again to the committee's attention.

The subject of competition in the retail market for gasoline is a deceptive one, for while it may seem straightforward on the surface, it strikes me that there is a great deal more to it than might first appear. Depending on whose data one uses, and on whose framework for analysis one adopts, the situation can seem totally different to different persectives. I'm not sure that the major oil companies are always in the best position to make the kind of marketing decisions that will shape the way Americans obtain their gasoline. On the other hand, the producers have done an admirable job of providing a reliable supply of gasoline for American consumers at prices far below world prices.

I will be looking to the evidence presented today with great interest, for it seems to me that we ought to demand a clear and undeniable showing of need for this legislation before we in the Congress begin to interfere with the operation of the market that has heretofore worked quite well. As I read S. 1140, this bill is quite a departure from the general antitrust approach. Rather than the broad prohibition on contracts, combinations, conspiracies in restraint of trade, this bill imposes very specific strictures on the method of distribution employed by the producers. This as well as every attempt to effect piecemeal changes in the antitrust laws for the benefit or detriment of a particular sector of the economy ought to be carefully considered.

Mr. Chairman, as I said, I commend you for bringing this issue to the committee's attention. We ought to do all that we can to see that small dealers are able to compete vigorously and effectively, and that producers are able to manage their own businesses to the full extent consistent with the law and economic well-being of the Nation.

Thank you, Mr. Chairman.

The Chairman. Senator Metzenbaum, do you have an opening statement?

Senator Metzenbaum. Yes.

The Chairman. Let me mention this. Mr. Rule has got to go to the White House at 10. Would it suit you if he testified and then you can make your statement?

Senator Metzenbaum. Sure.

The CHAIRMAN. Mr. Rule, I understand you have got to go to the White House at 10. Senator Metzenbaum has kindly agreed to let you go first and then he will make his statement. You may proceed now.

STATEMENT OF HON. CHARLES F. RULE, DEPUTY ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. RULE. Thank you, Mr. Chairman, members of the committee. I am pleased to be here this morning to discuss the views of the Department of Justice on S. 1140, the Motor Fuel Sales Competition Improvement Act of 1985.

As my prepared remarks indicate, the Department strongly opposes the bill. The committee has copies of my prepared remarks and in the interest of brevity, I would like to merely highlight the points there.

The Department's opposition to S. 1140 primarily is based on three factors. First, independent retail lessees do not appear to be declining because of unfair predatory competition from their integrated retail competitors, as is an assumption that underlies the bill.

We draw this conclusion from three factors. First of all, the market structure in the industry in terms of concentration among producers and refiners is not such that would lead one to believe that predation in this market is a likely occurrence.

The empirical evidence tends to bear this out. Included among that empirical evidence are two DOE studies that were done in response to requests from Congress. It appears that the decline of retail lessees is more likely due to regulatory changes and changes in market conditions, such as declining demand and demand for specialized service centers.

Second, the bill will result in less competition and less efficient distribution, we believe. Divorcement makes integrated oil companies incapable of operating service stations that, in certain circumstances, may be more efficient than having independent operations. The result could be higher prices to consumers. Indeed, a study of divorcement in Maryland indicates that consumers in that State are paying higher prices as a result of divorcement.

Also, open supply, in effect, imposes a per se rule of illegality on exclusive dealing or supply requirements contracts above 70 percent, and those types of arrangements can, under certain circumstances, increase the efficiency of distribution. Open supply also may reduce the economic opportunities for independent retailers.

Third, and most importantly, we believe that this bill is unnecessary because of current statutes on the books. Most importantly, the antitrust laws, we believe, are adequate to take care of any possible problem that may exist in terms of predation.

We also believe that those laws, because they are based on findings in particular circumstances, involving particular facts and particular parties, can be applied more discriminately than this one, and that the antitrust laws are less regulatory than would be S. 1140.

Having summarized my statement, I will stop there. I am happy to answer any questions. As you mentioned, Mr. Chairman, I do have to leave, regretfully, for a meeting at 10, but I will be happy to answer any questions now or in writing if I cannot answer them all before I have to leave.

The CHAIRMAN. Thank you very much.

Mr. Rule, have you actually investigated charges of predatory pricing, below-cost selling, or other pricing activities that may have caused independent dealers to go out of business in any markets?

Mr. RULE. We have not at this point, to my knowledge, looked at any of those in particular. We have had a number of investigations in the retail gasoline markets. Primarily, those investigations have focused on price-fixing among retail dealers; that followed deregulation.

We have indeed brought several indictments, and recently a conviction in Idaho was upheld by the court of appeals there.

The CHAIRMAN. Would the open supply provisions of this bill create a competitive market in which dealers could shop around for the best price from any supplier?

Mr. RULE. It would certainly provide maybe some opportunities to folks who now have exclusive dealing arrangements. The problem is that, of course, a dealer-retailer may have that option anyway currently.

He may decide to enter into an exclusive distribution arrangement because it guarantees a supply for him; it guarantees a price, some hedge against inflation. It provides more accurate information between the dealer and the refiner and it reduces transaction costs.

So there may be reasons that you actually are limiting the opportunities that may benefit retailers by providing additional security against uncertainty that an exclusive dealing arrangement can bring about.

Certainly, if an exclusive dealing arrangement is unreasonably restraining the alternatives available to retailers, that conduct is challengable by private parties under the antitrust laws and by us if we find that it is having an unreasonable effect.

The CHAIRMAN. Senator McConnell, do you have any questions you want to propound?

Senator MCCONNELL. No questions, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Ohio, Senator Metzenbaum.

Senator METZENBAUM. Mr. Chairman, I want to first, before you do leave, express my appreciation to you for holding these hearings. You and I have worked together on this legislation in the past and I am happy to be working with you again.

I am grateful to you for another reason. By conducting these hearings, you have brought out a number of faces that I have not seen for a number of months around these halls. It is nice to see so many of them back, keeping them on their job with this kind of make-work legislation.

Mr. Rule, would you be concerned at all if a handful of major oil companies dominated the sale of gasoline in particular regions of the country? And if you were, would you not worry that that would reduce competition and raise prices to consumers?

Mr. **Rule**. Certainly, there is the possibility that if by a handful, you mean a very highly concentrated local market involving gasoline retail did exist in a particular localized market, I would be concerned, but I imagine that would be a localized phenomenon, and while it may exist in some local markets, it might not exist in others. And it may only be a few isolated markets and it may be none, but I believe the antitrust laws can handle that problem.

Senator **Metzenbaum**. Let me give you the figures. The four-firm concentration in the wholesaling of gasoline, according to EIA—in 1975, the top four oil companies in Delaware had 57.8. In 1983, they had 82 percent. In Ohio, they had 52 percent in 1975 and 67 percent in 1983. In Montana, they had 48 percent in 1975 and 66 percent in 1983; in West Virginia, 62.5 percent in 1975 and 82 percent in 1983.

Now, those are not isolated instances. We have picked areas around the country. There is clearly a trend at the present time toward increasing domination of wholesaling by the major oil companies. They have increasing power to control retailers and set prices at the retail level.

Yet, you say there is really no cause for concern. What evidence do you have to support that point of view that there is no reason to be concerned?

Mr. **Rule**. Well, I guess I would make two comments. I think that the antitrust laws are adequate to deal with the problem, if indeed there is a problem. The mere fact of concentration in a State market may not indicate that there is a problem in any particular local market.

Generally, retailing will be a local market, and it may be that in any particular local market the concentration ratios are lower. Moreover, there may be other factors in those markets that make it very difficult for there to be some cooperative raising of price.

As we have indicated in our investigations of retail price collusion, we are concerned, and where we think there is a problem in terms of anticompetitive collusion, we have gone after that, and we will in the future continue to go after that. Therefore, I believe that the current antitrust laws are adequate.

Senator **Metzenbaum**. You made some statement about the Maryland situation. One of the arguments by the FTC against divorcement is that the Maryland example shows it will increase prices.

Let me read to you from a study of retail prices, adjusted to deduct taxes. It is taken from the Lundberg Letter, which you are well aware of. It shows Wilmington, DE; Washington, DC; and Baltimore as three of the lowest four cities, and all three of these cities are in States with divorcement laws.

Does that not indicate to you that prices are lower, not higher, in these States?

Mr. **Rule**. I would really have to look at the Lundberg Letter before I could comment. The study that was cited by the FTC is a study that DOE called perhaps the most informative, best done study in the area.

So unless we could actually look at that and have a chance to——

Senator **METZENBAUM**. I am sending it to you so you can look at it.

Mr. **RULE**. OK, all right.

Senator **METZENBAUM**. It speaks for itself; it is the best evidence.

Mr. **RULE**. Well, what I would generally want to do is have our economists and folks actually look at it and study it.

Senator **METZENBAUM**. I do not need them. You are smart; you can look at it.

Mr. **RULE**. Well, I appreciate that.

Senator **METZENBAUM**. It is very simple; it is elementary.

Mr. **RULE**. Let us see where we are.

Senator **METZENBAUM**. It is irrefutable.

Mr. **RULE**. Again, before I comment, I would have to look further, but I would be happy to respond to the Senator after we have had a chance to look at this.

Senator **METZENBAUM**. Well, Mr. Rule, I just want to say I think you come before us with statements without supportive evidence. We give you supportive evidence to the contrary; you say you want to look at it. We let you look at it and now you are saying, well, we want to think about it, or you want to do something else.

I just have to say to you that here again is another instance in which the Antitrust Division is really not in the position of supporting free competition working, but is on the other side of the table—a point that I have made to you before.

Let me ask you this: You have a new leader in the Antitrust Division, Mr. Ginsburg. Has Mr. Ginsburg been consulted with respect to this matter or is this something that has been solely within your area of expertise?

Mr. **RULE**. Before I answer that, if I could, Senator, let me just comment. The problem with looking at numbers—there is no question that on this sheet the prices are lower in those markets that you mention. But one would have to look at the underlying methodology to draw some conclusions as to the study.

The point I was merely making is that the comment about the studies that were cited by the FTC, and that we at least implicitly mention in our testimony, reflects what DOE felt was the most persuasive study in this area. But, again, if this is new evidence, then perhaps it needs to be looked at. But that was simply what we were saying.

Our view is that the antitrust laws, which are flexible, which are sensitive to underlying facts, and which I think both of us agree are extremely important to competition in this country and the economic welfare of this country, are adequate to take care of the problem.

With regard to Mr. Ginsberg, he was in the Division for a year before he left as the regulatory deputy. He was involved in energy matters, and he is the head of the Division and is responsible, of course, for all of the things that emanate from the Division.

Senator **METZENBAUM**. So that you are saying that your position does reflect his view?

Mr. **RULE**. I certainly believe it does, yes, sir.

Senator **METZENBAUM**. We would like to just be reassured of that fact. We would like to know if indeed that is the case. If it is not——

Mr. **Rule**. Well, it is the case; yes.

Senator **Metzenbaum**. Mr. Rule, I understand that you are due elsewhere. It always sounds good when you say you are going to the White House. I doubt very much you are going to see the President, but whomsoever you are going to see, God bless you, and goodbye. [Laughter.]

Mr. **Rule**. Thank you, Senator.

Senator **McConnell** [presiding]. Thank you, Mr. Rule.

[Prepared statement follows:]

Shell Oil Company

Jess Johnson, Jr.
Vice President, Government Relations

Suite 200
1025 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 466-1410

October 24, 1985

The Honorable Strom Thurmond, Chairman
Senate Committee on the Judiciary
Dirksen Senate Office Building
Constitution Avenue
Washington, D.C. 20510

Dear Senator Thurmond:

On October 9, 1985, the Senate Committee on the Judiciary held a hearing on S. 1140, Motor Fuel Sales Competition Improvement Act of 1985. Several charges were made during the Committee hearing regarding the competitive practices of refiners and refiner operated salary stations.

Shell, as one of the leading refiners and marketers in the U.S., would like to address some of the charges and issues that were made at the hearing and requests that these attached comments be made a part of the record.

Should you desire any further information or assistance from Shell, please feel free to contact us.

Very truly yours,

Attachment

Department of Justice

CHARLES F. RULE
DEPUTY ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the views of the Department of Justice on S. 1140, the "Motor Fuel Sales Competition Improvement Act of 1985." This bill, although different in name, is similar to S. 326 and S. 40, introduced during the last two Congresses, respectively, and opposed by the Department. The Department of Justice believes this legislation would have serious anticompetitive effects and thus strongly opposes its enactment. I appreciate this opportunity to state the reasons for that position.

Sections 2(a) and (b) of the bill, the modified "open supply" provisions, would prohibit any producer or refiner from requiring or agreeing to require any retail motor fuel dealer to purchase more than 70 percent of his retail sales of motor fuel from such producer or refiner. Section 2(c) would require dealers selling motor fuel under a refinery or producer trademark to provide reasonable notice at the point of sale of any sales of motor fuel not refined by the trademark refiner or producer. A dealer could, however, either convert one or more existing, or establish new, storage tanks for sale of motor fuel supplied by other than the trademark owner.

Section 3, generally referred to as the "divorcement" provision, while not barring large integrated refiners from owning and leasing retail gasoline stations to independent operators, would prohibit such refiners from directly operating retail outlets. 1/ Section 4 makes clear that a large integrated refiner would be permitted to own all or part of a retail station, but that such producer would be prohibited from selling motor fuel through an employee, commissioned agent, or person acting on behalf of the refiner or pursuant to a contract with the refiner whereby the refiner has control over the operation of the station.

Under section 6(a) of the bill, the Federal Trade Commission would be empowered to enjoin violations of the Act in federal court and the court would be empowered to restrain violations, require compliance, impose damages, and order appropriate equitable relief. Section 6(b) of the bill provides that persons affected by another party's failure to comply with its provisions may sue in federal court for damages and injunctive relief and, if successful, would be entitled to reasonable attorney and expert witness fees. In addition, section 6(d) of the bill would require the FTC to promulgate regulations for the collection of information to assist enforcement of the Act.

If enacted, S. 1140 is likely to lead to substantial restructuring of the retail petroleum industry. Legislation that would bring about the severe disruption inherent in such a restructuring should be enacted only where there is clear and convincing evidence that there has been a serious failure of the competitive market to allocate goods or services efficiently. As is explained in detail below, no such failure exists in the motor fuel industry. Moreover, even if some market failure were demonstrated, S. 1140 could only exacerbate the problem. As explained in part II below, the Department believes S. 1140 is likely to have severe anticompetitive effects and to cause substantantial marketing inefficiencies that are likely to lead to higher gasoline prices for the consuming public.

I. There is No Need for the Legislation

This bill is an effort to correct an alleged problem at the wholesale and retail levels of the petroleum industry. Since the early 1970s, many independent service stations have gone out of business and the decline in their numbers may be continuing. During the same period, the volume share of refiner-operated gas-only outlets has increased. Furthermore, there is some evidence that since late 1982, the volume share of jobber-supplied retail outlets has declined. 2/ Citing these developments, some industry observers have contended that a competitive defect exists at the wholesale and retail levels of the petroleum industry which, unless remedied, may result in the elimination of jobbers and independent service station dealers as a class. Such a result is viewed as unfair both to small business interests and to consumers of motor fuels who fear they may be forced to pay higher than competitive prices.

If the trend could be attributed to a competitive defect in the wholesale and retail gasoline market that threatens to increase consumer prices or eliminate efficient jobbers or dealers, some sort of governmental intrusion into the marketplace might be justified. However, the Department has been unable to identify any such competitive defect, and none has been brought to our attention. Indeed, the available evidence on the nature and causes of the problems confronting jobbers and dealers suggests that no such defect exists.

The most frequently expressed concern regarding the competitive structure of the domestic petroleum industry is that it is somehow anticompetitive or "unfair" for refiners to compete at the wholesale or retail level with jobbers or independent service stations that they supply. Proponents of this view suggest that integrated refiners can and do favor their own operations by raising the prices charged to jobbers or independent dealers, by transferring gasoline supplies to their dealers or company stores at lower than market prices, or by some combination of both these methods. Thus, the argument goes, the integrated refiner is engaging in predatory behavior against its independent rivals. The same proponents also complain that supply contracts between refiners and independent dealers restrict the ability of jobbers and dealers to compete at their respective levels.

Predatory practices in the gasoline industry have been alleged for many years. In response to allegations of predatory pricing against independent retail dealers, Congress enacted Title III of the Petroleum Marketing Practices Act, 3/ which directed the Secretary of Energy to study possible "subsidization" of retail gasoline dealers by major refiners, and whether such subsidization, if it occurred, was predatory or posed a threat to competition at that level. The Secretary's Final Report to the Congress, 4/ published in January 1981, concluded that there was no evidence of subsidization at the retail level as part of a predatory campaign directed against independent dealers. 5/

A second Report by the Department of Energy published in March 1984 repeated the conclusions of the first Report, 6/ that the decline of independent dealers was instead attributable to non-predatory causes, such as altered market conditions and past DOE price and allocation regulations. More specifically, the Reports concluded that the DOE petroleum price and allocation regulations had significantly disadvantaged certain independent retailers' ability to obtain petroleum products and to price them at competitive levels. Those regulations were also seen as causing or contributing to other market distortions that harmed the ability of independents to compete effectively with their integrated retail rivals. 7/ After extensive empirical and documentary investigation, the Department of Energy found no evidence of predatory subsidization in the retail petroleum industry.

Moreover, the evidence suggests that gasoline retailing is competitive in most major markets, and generally so across the continental United States. 8/ After a decade of controls, the gasoline marketing industry appears to be reacting to change in the marketplace, including increased costs of operation and changing customer preferrences, in a normal and competitive fashion. The marketing share of any given refiner nationally and in any given state is relatively low. 9/ Recent oil company mergers have not resulted in significant changes in refiner marketing shares. 10/ Moreover, the structure of gasoline marketing is such that entry barriers for new competitors are relatively low. This means that if one or more refiner-operated retail outlets attempted to raise their retail prices above competitive levels in a particular market, new retail outlets could enter the market and prevent the predators from earning long-term monopoly profits. Hence, any campaign of predatory behavior would not only involve short-term losses but would very likely fail to recoup those losses in the long run.

This evidence is reinforced by the fact that integrated refiners, who face a substantially unconcentrated market in most sections of the United States, have no apparent incentive to engage in anticompetitive predatory behavior in order to drive jobbers and independent gasoline retailers out of business. Generally, a firm would engage in predatory conduct only if it could reasonably hope to drive its competitors from the market, so that it might then increase its prices to monopoly levels without fear of competition. In other words, the hypothetical predator would be willing to lower prices and lose money in the short run, with the hope of making higher profits in the long run.

For example, to be effective in the retail gasoline industry, such a predatory scheme would, at a minimum, have to eliminate independent gasoline retailers. Even if an integrated refiner were able to drive some of its independent dealers out of business, however, it would still have to compete at the retail level with the dealers of other refiners. Thus, the strategy would also have to ensure the elimination of competition from other integrated refiners, either by driving them out of the market as well, or by establishing a horizontal price-fixing agreement among the surviving companies. Generally speaking, the smaller the number of companies in the market, the easier it is to agree on prices and maintain a cartel. Accordingly, the degree of concentration of refiners in local retail gasoline markets may be correlated closely with the likely success of a predation scheme. Employing a similar analysis, predation by refiners against jobbers is equally unlikely.

In any event, even if predation were occurring in some retail gasoline markets, additional legislation is unnecessary as the existing antitrust laws provide an adequate remedy for such conduct. For example, anticompetitive attempts to drive independent dealers out of the market are actionable under the Sherman Act. In such situations, the offending firms would be subject to both civil and criminal prosecution. Private remedies also exist in the form of injunctive relief and treble damages. The antitrust laws also prohibit a wide variety of other conduct ancillary to a predation scheme that unreasonably restrains or substantially lessens competition--such as horizontal price fixing. Unlike the approach of this bill, the antitrust laws provide effective remedies for predatory conduct without requiring extensive regulation of or proscriptive impediments to day-to-day responses to business conditions that are necessarily diverse, local, and rapidly changing. This country's unsatisfactory experience with gasoline marketing regulations illustrates some of the problems likely to be created by the proposed bill. In contrast, the antitrust laws are intended to--and do--promote efficient business behavior by preserving the flexibility of businesses to respond, within appropriate boundaries, to changing market conditions that the firms themselves are in the best position to know and assess.

In sum, no persuasive reasons have been advanced for enacting such far-reaching legislation as S. 1140. We are not aware of any credible evidence that anticompetitive predatory behavior is occurring at the wholesale or retail gasoline level, nor do we deem it likely that predatory conduct intended to drive a significant portion of jobbers and independent dealers out of business could succeed. Rather, the available evidence suggests that past DOE regulations, altered market conditions, and other factors have contributed more to the problem faced by the independents than any allegedly anticompetitive activity by integrated refiners. In any event, the antitrust laws provide an adequate remedy for any predatory or unreasonably restrictive conduct that may hereafter be identified.

II. S. 1140 Would Have Serious Anticompetitive Effects

The Department opposes S. 1140 not only because it is unnecessary, but also because it would have severe anticompetitive repercussions throughout the petroleum industry. Two provisions of the bill are of particular concern: section 3, the "divorcement" provision, which prohibits major refiners from operating motor fuel service stations; and sections 2(a) and (b), which contain the modified "open supply" provisions.

A. The Divorcement Provision

The Department is opposed to the divorcement provision of S. 1140, which would prohibit large integrated refiners from owning and operating retail outlets. This provision would prohibit large intergrated refiners from using an apparently efficient means, preferred by many customers, of distributing motor fuel. It would eliminate an entire group of competitors from the marketplace and thereby could lead to inefficiency and higher consumer prices.

As indicated above, the retail gasoline industry is competitive in most markets. Major oil companies have partially integrated into retailing to provide an apparently more efficient and lower cost means of distributing motor fuel. Prohibiting major oil companies from using what they believe is an efficient method of distributing motor fuel will not result in lower retail prices; rather, it is far more likely to force consumers to pay for a less efficient distribution method in the form of higher gasoline prices or lesser availability of supply, or both. Both economic theory and empirical studies of state divorcement laws support this view. 11/

Moreover, the protection afforded lessee dealers from retail competition by divorcement legislation is likely to be temporary. If divorcement were adopted, the refiner-operated outlets, usually large-volume outlets in urban areas, would likely be operated by chain-marketers, and not by independent dealers. Furthermore, the 1984 DOE Report concluded that a successful retail presence by a refiner in an area tends to strengthen the position of that refiner's retail lessee-dealers in the same area, because the refiner has a greater incentive to promote its brand name. 12/ Divorcement would likely weaken the position of lessee-dealers relative to jobber chain-marketers.

Recognition that vertical integration may have benefits does not mean that the entire retail industry should be vertically integrated, for it is clear that independent dealers also serve an important function in this market. While many independent dealers have gone out of business in the past few years, many independents have continued to maintain profitable businesses. The competitive market should be permitted to determine the optimal mix of independent and refiner-owner and operated outlets without governmental intervention, since the market ultimately will determine the mix that provides the greatest benefit for consumers.

B. The Open Supply Provision

The Department is also opposed to the modified "open supply" provisions of sections 2(a) and (b) of the bill, which would prohibit producers and refiners from requiring or agreeing to require any retail motor fuel dealer to purchase more than 70 percent of his retail sales of motor fuel from such producer or refiner. This provision is intended to increase a dealer's flexibility with respect to securing gasoline supplies by substantially restructuring existing supply arrangements in a way that is intended to enhance a given dealer's ability to secure gasoline from a different supplier without violating existing supplier-dealer contracts. The antitrust laws, however, already prohibit non-price contractual restraints such as exclusive dealing arrangements or requirements contracts that are determined to be anticompetitive under the rule of reason approach. 13/

Arrangements whereby a buyer and seller agree that the buyer will use or deal only in the goods or services of the seller, or that the buyer will purchase all or a substantial portion of its total requirements for specified goods or services only from the seller, do not necessarily restrain trade in an unreasonable way or to an unreasonable degree. The procompetitive benefits of such arrangements must be weighed against any likely anticompetitive effects in order to determine their legality under the antitrust laws. While the economic effects of various contractual provisions are likely to vary among cities and regions, exclusive dealing and requirements contracts often provide benefits for both dealers and suppliers in the gasoline industry and, hence, most importantly, for consumers. For example, such arrangements assure the buyer a steady supply, provide some protection against price increases, provide suppliers and dealers with information necessary to make long-run plans, and reduce the expense and risk of product shortage. Such features help to reduce transaction costs for both the buyers and the sellers; such increased efficiencies are passed on, through the process of competition, as lower prices to consumers. 14/ Furthermore, supply contracts provide refiners with the incentive to maintain high standards of quality control, since refiners can recoup their investments in quality services and products through their dealers' sales.

The procompetitive benefits of exclusive dealing arrangements have been acknowledged by the Supreme Court. 15/ The Court found that especially where the market structure of an industry is characterized by numerous buyers and sellers, such arrangements often promote competition by ensuring stable markets and mutually advantageous business relationships. The gasoline industry currently is characterized by relative ease of entry into wholesaling and relatively low levels of concentration in both refining and retailing markets. Accordingly, the types of contractual distribution arrangements that would be affected by this bill are likely to have procompetitive effects, and any anticompetitive effects may be challenged under the antitrust laws.

The bill's modified open supply provision would prohibit use of exclusive dealing contracts and allow requirements contracts only when such contracts expressly permit the buyer the right to purchase elsewhere whenever it is favorable to him so long as he has fulfilled his 70 percent purchase obligation to his trademark supplier. This would, in effect, subject exclusive dealing and greater than 70 percent requirements supply arrangements to per se illegality instead of rule of reason analysis. As a result, the potential procompetitive benefits of such contractual arrangements would be denied not only to producers, refiners and distributors, but to retail gasoline dealers and to the motoring public. We are aware of no reason why such harsh treatment should be accorded to these private contractual arrangements, much less why this bill should override existing antitrust law precedents in this area.

In the absence of divorcement, open supply legislation, by granting additional contractual rights to dealers, would reduce the incentives of refiners to continue their relationships with dealers, encouraging refiners to operate their own retail stations or to sell only to wholesalers. Thus, open supply would be likely to result in fewer dealerships. If divorcement and open supply were imposed together, as proposed by this bill, integrated refiners might choose to shift distribution away from lessee-dealers to wholesalers by selling at the rack. Thus, the interference with the marketplace caused by divorcement and open supply, either singly or in combination, is most likely to harm the key group that these measures were designed to protect, namely the lessee dealers.

III. Conclusion

As stated above, no persuasive reasons have been advanced for enactment of S. 1140; indeed, the available evidence strongly suggests that such legislation is not needed. First, there is no evidence or likelihood that predatory behavior against jobbers or independent dealers is occurring or successfully could occur in the gasoline industry. Rather, changes in the number of independent retail gasoline stations are far more likely attributable to industry changes in the past several years, including the effects of past DOE price and allocation regulations, changed market conditions, and trends toward high-volume, low-overhead gasoline stations and the growth of specialized repair centers. Moreover, the bill is likely to result in significant loss of efficiencies as it would disrupt the functioning of the wholesale and retail gasoline markets and would dramatically interfere with competitive market mechanisms. In our view, the bill, if enacted, would increase gasoline prices to consumers.

For all these reasons, the Department of Justice strongly recommends against enactment of this legislation.

Mr. Chairman, that concludes my prepared remarks. I would be happy to answer any questions that you or other members of the Committee may have.

FOOTNOTES

1/ "[L]arge integrated refiner" is defined by the bill as a refiner who produced more than 30 percent of the domestic and imported crude oil supplied to its refinery and whose refinery capacity exceeds 175,000 barrels per day.

2/ Office of Competition, Department of Energy, Deregulated Gasoline Marketing: Consequences for Competition, Competitors and Consumers, DOE/CP-0007 Draft at iii, 80 (March 1984) (hereafter referred to as DOE Report II").

3/ 15 U.S.C. § 2841 (1976).

4/ Office of Competition, Department of Energy, Final Report: The State of Competition in Gasoline Marketing (As required by Title III of the Petroleum Marketing Practices Act) (January 1981) (hereafter referred to as "DOE Report I").

5/ Report at Preface; see generally Chapter III.

6/ DOE Report II at 3-19.

7/ These conclusions are mirrored and expanded upon in other studies. See Marvel, H.P., "The Decline of the Lessee Gasoline Dealer," (March 1982) and Honeycutt, T.C., "Competition in Controlled and Uncontrolled Gasoline Markets," published in III Contemporary Policy Issues, Spring 1985.

8/ DOE Report II; Fenili, R., Lane, W., and Delaney, J., "Gasoline Marketing 1980-1983: A Return to the Competitive Marketplace," Energy Information and Analysis, Washington, D.C., 1983.

9/ See, e.g., National Petroleum News: 1984 Factbook Issue showing numbers of branded retail outlets by company and state; Lundberg Letter No. 22, at 10 (April 1, 1983); American Petroleum Institute, Discussion Paper of October 1983: Market Shares and Individual Company Data for U.S. Energy Markets: 1950-1982; Lundberg Survey, Inc., National Share of the Market, December 1982; VIII Lundberg Letter No. 11, at 6 (Jan. 16, 1981); and "A Short Term Analysis of the Effect of Concentration on Price in the Gasoline Market" The Petroleum Marketing Monthly (April 1985).

10/ See Testimony of Timothy Muris, Director, Bureau of Competition, Federal Trade Commission, Before the Committee on the Judiciary, United States Senate, (March 15, 1984); Report of the Federal Trade Commission, Mergers in the Petroleum Industry (1982); Texaco Inc. and Getty Oil Co.; Proposed Consent Agreement with Analysis to Aid Public Comment, 49 Fed. Reg. 8,550-64 (1984). Where proposed mergers would have substantially lessened competition in specific markets, the Federal Trade Commission has ordered divestiture of certain petroleum-related assets, including refineries. Where proposed mergers, based on wholesale gasoline sales, would have resulted in state or regional market share distributions that could adversely affect competition, the Commission has required that certain marketing properties, including retail stations, be sold.

11/ See DOE Report II at iv, 97-105, for a survey of studies of divorcement.

12/ DOE Report II at 126.

13/ See Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36, 49, 57-59 (1977); National Society of Professional Engineers v. United States, 435 U.S. 679, 690-92 (1978).

14/ See Divorcement of Motor Fuel Service Stations: Hearings on S. 326 Before the Senate Judiciary Comm., 97th Cong., 1st Sess. 403 (1981) (statement of Assistant Attorney General William F. Baxter).

15/ Jefferson Parish Hospital District No. 2 v. Hyde, 104 S. Ct. 1551 (1984) (O'Connor, J., concurring).

Senator **Metzenbaum**. I have an opening statement.

Senator **McConnell**. Go ahead, Senator Metzenbaum.

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator **Metzenbaum**. In 1981, the Senate Judiciary Committee reported favorably a bill very similar to the one we are considering today. At that time, Socal did not own Gulf, Texaco did not own Getty, Mobil had not bought Superior. Today, these companies are no longer competitors; they are combined companies.

Today, the need to prevent a few major oil companies from dominating the retail sale of gasoline is even more urgent than 4 years ago.

In the meantime, while these and other huge mergers were occurring, the number of independent service stations has been declining. In 1973, there were about 226,000 independent stations. In 1984, there were 128,000. What accounts for that drastic decline?

Part of the explanation is that some stations were uneconomical. Some, indeed, were badly managed; some were in bad locations. Out of thousands of stations closed, of course, there was not just one reason.

But a major cause of this decline and the one that we are here to talk about today is that many of these stations did not get a fair shake from the big oil companies that supply them. Many of them had to compete with company-owned and operated stations under impossible and unfair conditions.

The fact is that the big refiners often sell gasoline to independent dealers at higher prices than their company-operated competitors are selling it at the pump. I know of some very specific instances of that very situation in my own State.

Nobody can compete if the competitor sells for less than the dealer himself has to pay at wholesale. In addition, there have been unfair rent increases and other predatory practices aimed at independent dealers by the big oil companies.

Too often, the company-operated stations have tried to drive the independent dealer out of business, to take over the property, or to eliminate competition. The independent dealer should have to compete for business just like everyone else. The question is whether he or she has to compete with a refiner that has the power to drive that dealer out of business.

The question is whether the independent, usually a business owned by one individual and run by a handful of employees, will be able to compete on fair terms with a multibillion-dollar international oil company.

In fact, the most important question is whether the independent dealer will be around to compete at all or whether the big oil companies will soon dominate retailing just as they now dominate crude oil production, refining pipelines and wholesaling.

The bill we have introduced—Senators Thurmond, DeConcini and myself—is intended to ensure that competition is maintained in the retail sale of gasoline. This bill has two major provisions.

It prohibits the largest oil companies from operating directly a service station. They would still be allowed to own the facility and to lease it to the dealer, but the dealer would be the one to run the station and set pricing and other policies. This provision would prevent the largest oil companies from having an incentive to destroy independent dealers and take over retailing through company-owned and operated stations.

The bill only applies to approximately the largest 20 oil companies. It does not prohibit any other oil company or other type of company from operating stations.

This bill also improves competition by allowing dealers to buy up to 30 percent of their product from any source. The dealer would have to designate clearly that the gasoline was supplied by someone else. This provision allows the dealer to look for cheaper supplies if his brand name supplier charges too high a price.

In addition, it allows the consumer the chance to buy a cheaper, off-brand product at the station if he or she wishes. There is no reason a dealer should be stuck with selling only the brand name refiner's gasoline as long as it is clearly labeled.

The big oil companies have spent hundreds of millions of dollars over the years to try to get consumers to think that Shell gasoline is superior to Texaco's, and that Texaco's is superior to Exxon's, and so on and so on.

Let us quit kidding the public. The only factor that really matters is the price. This provision will allow a dealer to give consumers another option and to provide a lower-priced alternative.

Both these provisions will make the retailer gasoline market more competitive. They will give dealers a fair chance to compete, and they will help keep prices at the pump down.

There is no industry in this country that speaks more loudly or more often or more enthusiastically about the free enterprise system, and basic to the free enterprise system is free competition. It is time that the oil companies of this country joined the team.

Thank you, Mr. Chairman.

[Text of S. 1140 follows:]

II

99TH CONGRESS
1ST SESSION

S. 1140

To amend the antitrust laws in order to preserve and promote wholesale and retail competition in the retail gasoline market and to protect the motoring safety of the American public.

IN THE SENATE OF THE UNITED STATES

MAY 15 (legislative day, APRIL 15), 1985

Mr. METZENBAUM (for himself, Mr. THURMOND, and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend the antitrust laws in order to preserve and promote wholesale and retail competition in the retail gasoline market and to protect the motoring safety of the American public.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Motor Fuel Sales Competition Improvement Act of 1985".

WHOLESALE PURCHASE OF GASOLINE

SEC. 2. (a) Notwithstanding any other provision of law and except as provided in this section, it shall be unlawful for any producer or refiner, directly or indirectly, to require any retail motor fuel dealer to purchase more than 70 per centum of the monthly retail sales of motor fuel from such producer or refiner or to prohibit the use or conversion of storage tanks and dispensers as provided in subsection (c).

(b) It shall be a violation of this Act for any producer or refiner to contract, combine, or conspire with any other producer or refiner for the purpose of violating subsection (a).

(c) It shall be unlawful for any dealer, at a motor fuel service station displaying a trademark, trade name, or other identifying symbol or name owned by a refiner or producer, to sell motor fuel which is not provided by or for such producer or refiner without providing reasonable notice at the point of sale that motor fuel dispensed by one or more dispensers is not refined by or for such producer or refiner, except that a dealer may convert one or more existing storage tanks and dispensers or establish new storage tanks and dispensers for sale of motor fuel supplied by other than the owner of the trademark, trade name, or identifying symbol displayed at the station.

OPERATION OF MOTOR FUEL SERVICE STATIONS

SEC. 3. It shall be unlawful for any large integrated refiner to operate any motor fuel service station in the United States.

EXCEPTIONS

SEC. 4. Notwithstanding section 3, it shall not be a violation of this Act for a large integrated refiner to own all or part of the assets of a motor fuel service station so long as such producer does not engage in the business of selling motor fuel at such station through any—

(1) employee;

(2) commissioned agent;

(3) person acting on behalf of the refiner or under the refiner's supervision; or

(4) person operating such station pursuant to a contract with the refiner which provides that the refiner has substantial or effective control over the motor fuel operations of the station.

DEFINITIONS

SEC. 5. For purposes of this Act the term—

(1) "producer" means any person who is engaged, directly or indirectly, in the production of crude oil;

(2) "refiner" means any person engaged, directly or indirectly, in the refining of motor fuel or any producer who contracts with another to refine petroleum products for purposes of sale of motor fuel by the producer;

(3) "large integrated refiner" means any person who for the most recent calendar year for which data are available—

(A) produced, directly or indirectly, more than 30 per centum of the domestic and imported crude oil supplied to its refinery; and

(B) whose total refinery capacity exceeds one hundred and seventy-five thousand barrels per day;

(4) "motor fuel" means gasoline, diesel fuel, alcohol, or any mixture of them sold for use in automobiles and related vehicles;

(5) "motor fuel service station" means any facility at which motor fuel is sold at retail;

(6) "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, joint-stock companies, trustees and receivers in bankruptcy and reorganization, common law trusts, and any organized group, whether or not incorporated;

(7) "United States" means the several States, the District of Columbia, and any territory or possession of the United States.

ENFORCEMENT AND EFFECTIVE DATE

SEC. 6. (a) The Federal Trade Commission may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever the Federal Trade Commission has reason to believe that any person has violated or is violating any provision of this Act, or any regulations promulgated thereunder. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance, to impose monetary penalties under the same terms and conditions as provided in section 5(m)(2)(A) of the Federal Trade Commission Act, and to order such additional equitable relief as it deems appropriate.

(b)(1) If any person fails to comply with the requirements of this section, any other person affected by such failure may maintain a civil action against such person failing to comply with such requirements for damages and appropriate equitable relief, including temporary and permanent injunctive relief. If the plaintiff prevails in any action under this section, the plaintiff shall be entitled to reasonable attorney and expert witness fees to be paid by the defendant, except that in any case in which the court determines that only nominal damages are to be awarded to the plaintiff, the court may, in its discretion, determine not to direct that such fees be paid by the defendant.

(2) An action brought pursuant to this section may be brought, without regard to the amount in controversy, in the district court of the United States in any judicial district in which the plaintiff resides or is doing business or in which the defendant resides or is doing business.

(c) Sections 2 and 3 of this Act shall take effect one year after the date of the enactment of this Act.

(d)(1) The Federal Trade Commission shall prescribe regulations for the collection of information necessary for the determinations specified in section 3 and for the manner of complying with the requirements of section 2(c).

(2) Notwithstanding any other provision of this Act, information related to section 3 need not be provided by private persons if reliable and timely information is available from published sources.

(3) Regulations promulgated pursuant to paragraph (1) shall be promulgated, after notice and a reasonable period for comment by the public, no later than one hundred eighty days after the date of enactment of this Act.

Senator McCONNELL. Thank you, Senator Metzenbaum.

I would like to call now Ronald Rowe, the Assistant Director of the Bureau of Competition of the Federal Trade Commission.

Mr. Rowe?

STATEMENT OF HON. RONALD B. ROWE, ASSISTANT DIRECTOR, BUREAU OF COMPETITION, FEDERAL TRADE COMMISSION, WASHINGTON, DC

Mr. ROWE. Senator Metzenbaum, Senator McConnell——

Senator McCONNELL. You might pull that mike around in front of you.

Mr. ROWE. Can you hear me?

Senator McCONNELL. Yes.

Mr. ROWE. Thank you very much, and good morning. I appreciate the opportunity to present the views of the Commission staff on the effects on competition and consumers of proposed S. 1140, entitled the Motor Fuel Sales Competition Improvement Act of 1985.

The committee has already received the Commission's July 9, 1985, letter opposing S. 1140. I respectfully request at this time that the Commission's letter and the staff statement be received into the record, and then, with your permission, I will proceed with a very brief oral summary.

Senator McCONNELL. Without objection, we will include that.

Mr. ROWE. Thank you.

S. 1140 closely resembles legislation offered previously in the Senate and House and various State legislatures calling for vertical divorcement of refiner-owned and operated gas stations, as well as for the abrogation of refiner-lessee franchise contracts in favor of what is called open supply.

S. 1140, as well as other bills, presume for their support the existence of widespread market failures and anticompetitive practices by major refiners and oil companies and basic infirmities in the antitrust laws. These presumptions are wrong.

The Commission's letter of July 9 opposed S. 1140 for three reasons. One, there is no credible evidence of anticompetitive abuses by major refiners or oil companies. Second, the antitrust laws are sufficient to remedy such anticompetitive abuses should they arise. Third, vertical divorcement and contract abrogation in favor of open supply would raise gasoline distribution costs, eliminate legitimate price competition, and raise prices to consumers.

With respect to each of the stated reasons for opposition, DOE reports in 1981 and 1984 indicate that dealer franchisees have not been, and are not likely to become, targets for anticompetitive practices by major refiner-suppliers.

Claims that refiners subsidize their company-operated outlets to harm their franchisees are unsubstantiated; they make no sense. Refiners are extremely unlikely to wage war on their franchise dealers who constitute presently, as they have in the past, the predominant distribution system for their direct gasoline sales.

If refiners did somehow try to predate on their own distributors, they would most likely lose their market share, suffer higher perunit refinery costs, and lose money.

Second, S. 1140's prohibition against refiner or producer collusion is unnecessary. Civil and criminal prohibitions of the Sherman Act apply to such behavior, as do the civil prohibitions of the FTC Act under section 5 thereof. There is simply no need for provisions of the bill requiring open supplies or prohibiting any refiner limitations on gasoline tank conversions.

Such requirements and limitations, as found in present franchise contracts between refiners and dealers, do not represent unreasonable restraints of trade. If they did, as noted by the Commission and by Mr. Rule previously, they would be illegal under existing antitrust laws.

Third, legislated lessor-lessee contract alteration and vertical divorcement are unnecessary, and S. 1140 should not be used to redress perceived unequal bargaining positions between refiners or producers and their lessee dealers.

Congress has presumably achieved the balance that it believed appropriate through its earlier passage of the Petroleum Marketing Practices Act of 1978, or PMPA. Any change in this balance should await a full study and careful review of the likely effects.

The antitrust laws deter firms from engaging in anticompetitive behavior, but at the same time allow them to achieve lower costs through vertical integration. In contrast, the prohibition against refiner-marketer integration embodied in S. 1140 would deny firms the benefits of increased efficiency by arbitrarily forcing vertical divorcement, depending on the level of aggregate refinery capacity of certain refiners.

Legislated divorcement that ignores vertical efficiency would add costs to gasoline distribution in the United States, and these costs would be directly passed on to the consumers. As Mr. Rule noted, Maryland consumers, by one study cited by DOE, presently pay more for gasoline than consumers in other States because of a State divestiture law.

Finally, S. 1140 would benefit neither consumers nor, in the long run, the gasoline dealer groups that may seek its passage. Dealer franchisee and refiner woes may not properly be laid anywhere but on current conditions caused by diminished demand for gasoline since the early 1980's and proliferation of retail outlets during years of Federal price and allocation regulation prior to 1981.

Diminution in the total service station population has not been accompanied by similar increases in refiner-owned and operated outlets. Rather, other independent marketers have increased their aggregate share of the market—marketers such as multiunit jobbers, convenience stores, and other groups.

Protectionist legislation such as S. 1140 would interfere with these normal competitive processes and would result in higher consumer prices.

Thank you for your attention. I would be more than pleased to answer any questions that you might have.

Senator **McConnell**. Thank you, Mr. Rowe. I expect Senator Metzenbaum might have a few questions for you.

Senator **Metzenbaum**. I do.

Mr. Rowe, what is the basis for the last statement you just made that the refiner-owned station proportion of the total number of stations has not increased? On what did you base that comment?

Mr. ROWE. On several sources; one, Lundberg Reports, which I read regularly. Lundberg, a private information agency, is widely respected by gasoline marketers, dealers, oil companies, and other people who try to get information and statistics about the petroleum industry, as well as DOE information and EIA information published.

Quite simply, the largest marketer group—the greatest growth in that group in the last several years has been through jobbers, not refiners operating company-owned stations. Government figures published by EIA and Lundberg Reports make it quite clear that refiner-owned stations have continued to constitute a very small proportion of overall station population.

As a matter of fact, the group of refiners to which this bill would apply in the main confine their direct gasoline sales more to franchisee operations than do any other refiner groups and have a lower percentage of company-owned operations.

Senator METZENBAUM. Mr. Rowe, you have argued that the share of stations made up by company-operated stations is very small, but that overlooks share of market.

It is one thing to have a number of stations; it is another thing to talk about the share of market. The national percentages that you talk about are misleading. First, the share of total sales is higher than the share of stations. Second, the share is much higher than the national average in some regions, and it is increasing.

For example, based upon a draft of deregulated gasoline marketing put out by the DOE—Consequences for Competition, Competitors and Consumers, U.S. Department of Energy, March 1984—the share of sales by company-operated stations in Ohio, my own State, was 16.4 percent in 1972, 41.5 percent in 1981. In West Virginia, it was 10.8 percent in 1972, and almost double that, 19.3 percent, in 1981. In Michigan, it was 8.2 percent in 1972, and almost triple that by 1981, 23.1 percent.

Other examples show the same pattern. In addition, some metropolitan areas have even higher percentages. Do not these figures, talking about share of market, not the number of stations, give a more reliable indication of market power?

Mr. ROWE. No; the reason for that is quite simple. There may be isolated situations where refiners own stations. As I said, the group at which this bill is aimed—the major refiner oil companies, those that are vertically integrated—have in the main their largest share of retail distribution through their own franchisee outlets, not through their company operations.

As a matter of fact, the reason that their share seems higher overall is because it includes their direct sales through franchisees. That would seem to imply quite strongly that they have a very high degree of their sales through franchisees and not through direct company outlets.

Senator METZENBAUM. Do not these figures have any——

Mr. ROWE. On the other hand, the companies below that area, the refiners who may be fully integrated and own their own stations, have been described by many as independent refiner-marketers.

Senator METZENBAUM. Do not these figures have any relevance at all, Mr. Rowe?

Mr. Rowe. In the main, I think that the conclusions of the report are more important. The conclusions of the report are simply that refiner-owned and operated stations have remained stable over the years. They are used mostly as training tools for companies that want to figure out marketing devices and for conversion to gas-only outlets.

Quite simply, however, the main form of marketing has been through franchise dealers and will probably continue to be so.

Senator Metzenbaum. Mr. Rowe, with your own visual ability, are you not aware of the fact that the company stations that we see opening up are those super stations with a tremendous amount of land area, more pumps, bigger operations, as compared to the independently operated stations, and they are pumping that much more volume of gasoline? That does not seem to affect your thinking at all?

Mr. Rowe. Senator Metzenbaum, I think the observations have been that most units have increased their volume sales per station over the last several years. Franchisee outlets have been encouraged by their franchisors, at cost to refiners, to increase the volume of the station by putting in self-service pumps and by increasing gas-only sales.

This is a trend which independent marketers started back in the 1950's which has spread to the entire industry. With gasoline selling more like a commodity rather than individual branded preference, it seems to be the preferred method of marketing.

Senator Metzenbaum. How long have you been with the FTC?

Mr. Rowe. I have been with the Federal Trade Commission since 1969, Senator.

Senator Metzenbaum. Then you would be familiar with my next question; I just wanted to be certain.

Would you list for the committee the oil mergers that have occurred since October 1981 when Mr. Miller became Chairman?

Mr. Rowe. Well, I would start by listing those that did not occur—Mobil-Marathon, which the Federal Trade Commission unanimously supported a preliminary injunction to block; Gulf-Cities Service, which the Federal Trade Commission unanimously filed a preliminary injunction in Federal district court to block; other mergers that occurred—in the main, were United States Steel and Marathon, and Occidental-Cities Service as a result of the Commission's blocking of the Gulf-Cities Service merger.

Senator Metzenbaum. Which ones that did occur?

Mr. Rowe. The mergers that have occurred have been Texaco and Getty, Socal and Gulf. In both of those instances, the Commission accepted consent decrees that provided for substantial divestitures to eliminate horizontal overlaps and potential anticompetitive results.

In other mergers such as Mobil-Superior and other acquisitions, essentially, of crude oil reserves——

Senator Metzenbaum. Occidental-Cities Service.

Mr. Rowe. There were no anticompetitive results which the staff could find.

Senator Metzenbaum. Would you not agree that if this pattern continues, there is going to be greater control of all levels of the industry by the major oil companies?

Mr. ROWE. In looking at statistics and drawing upon information that we have gathered about oil company aggregate concentration, at almost every level of the industry concentration has declined in years before acquisitions, so that aggregate concentration has, if anything, diminished since the 1950's.

The largest oil companies in crude oil still control about the same percentage of domestic crude oil reserves that they did back in the 1950's and 1960's. Refinery concentration has remained stable and about the same.

As a matter of fact, concentration lessened during years of Federal price and allocation controls when more refiners were encouraged to enter the market. It increased slightly when refineries which could not survive in a free market were forced to go out of business because of lack of efficiencies.

But at all levels of the industry, concentration has not increased substantially by virtue of these acquisitions.

Senator METZENBAUM. The FTC presented written testimony to the legislature of the State of Washington earlier this year arguing against divorcement legislation. Did you prepare that testimony?

Mr. ROWE. Yes; the Federal Trade Commission staff filed those comments.

Senator METZENBAUM. Let me read you one of the statements. "Even if predatory behavior by refiners were found to exist, it could be reached under the Sherman Act, the Clayton Act, or the Federal Trade Commission Act, as well as under State law."

Now, that sounds like the FTC is saying we do not need a bill to prevent discriminatory practices harmful to small business. Enforcement of the laws against predatory pricing is a better alternative.

How many predatory pricing cases has the FTC brought since Mr. Miller became Chairman in 1981?

Mr. ROWE. I am not sure I can answer for Mr. Miller as to all predatory pricing cases.

Senator METZENBAUM. Well, you can answer for the Commission.

Mr. ROWE. I do know that in the petroleum industry, the levels of concentration are not such that absent wide-scale collusion by members of the industry at some level, you could have predatory pricing.

Quite simply, Exxon, I think the largest oil company, has less than 10 percent of the market at any level, and economic theory and antitrust law precedent indicates that it is not possible to find predation with that share of the market.

Senator METZENBAUM. Well, let me ask you this question. I think we will hear some testimony before the day is over—at least in previous hearings we have—where an oil company, one of the majors, put a station within several thousand feet of an independent dealer and then dropped the prices below that which the dealer had to pay at the wholesale level.

Would that be considered predatory pricing on your part, as you see it?

Mr. ROWE. If the reason for price differences is because of different types of operations and you are looking simply at the street price for the gasoline or one type of wholesale price against another, I would say no. It is very difficult to tell anything by looking at those prices.

Company-operated outlets operating on salaried operations——

Senator **Metzenbaum**. Wait, you missed my question. I am not saying anything about the cost of operation. I am saying that the product is being sold for less than the independent dealer is required to pay. Now, that has got nothing to do with the cost of overhead, nothing to do with rent, nothing to do with anything else.

If the actual retail price is less than that which the independent dealer has to pay, would that not appear to you to be predatory pricing?

Mr. **Rowe**. No; I was going to go on and answer your question by stating that it depends upon the volume in many instances of——

Senator **Metzenbaum**. The volume?

Mr. **Rowe**. The volume that is purchased as to——

Senator **Metzenbaum**. You mean if you sell millions of gallons at a lesser price, it is better than selling a smaller number at a higher price? Is that your point?

Mr. **Rowe**. Well, there are obviously cost differences between different types of retail operations. If you had the precise type of retail operation being opened up down the street, they should have similar costs; that is similar prices.

Senator **Metzenbaum**. Mr. Rowe, I am not really asking you about the different volumes. I am saying to you here is a station—let us say they are selling 50,000 gallons a month, 80,000 gallons a month, and the company locates a station within a mile of it and that station starts to retail the product at less than they are charging the dealer.

Do you mean to tell me that is not predatory pricing?

Mr. **Rowe**. I will answer the question with a rhetorical question. If that refiner opens up a station and attempts to drive its own customer out of business down the street when it must depend to keep its refinery volume up by selling 80 percent of its volume through that channel, why would it make any sense for it to predate in that fashion?

Senator **Metzenbaum**. Why would it do what?

Mr. **Rowe**. Why would it make any sense for a company to predate in that fashion?

Senator **Metzenbaum**. For the very reason we are holding this hearing, to drive that independent dealer out of business. That is exactly what this hearing is about. That is exactly what has happened in this country. It is exactly what has happened in my own city of Cleveland.

I have even run into dealers on the street who have walked up to me and told me that this is exactly what happened. I run into them on the tennis court who walk up to me and say, "You know what happened to me," and tell me a whole story about how they put a station within a very close distance and were selling their product at less.

The answer is to my question to you about how many predatory pricing cases have been brought since Mr. Miller became Chairman of the Commission is zero. So, the real question is, What are you doing in order to protect free competitive practices to operate in this country?

You say in your testimony in Washington that there are plenty of laws to take care of it, but if the people who are supposed to be enforcing the laws are not willing to do that, then the laws do not mean a hell of a lot, do they?

Mr. **Rowe**. Senator Metzenbaum, I respectfully disagree. The numbers that we have show that franchisee marketers remain essentially the same percentage of major refiner operations through direct sales now as they have in the past.

Senator **Metzenbaum**. I am not asking you about statistics.

Mr. **Rowe**. These contentions have surfaced for years. This is not the first time such a bill has come before the Senate or the House. These bills have a history of some 20 years.

Any predation scheme that goes on for 20 or 30 years is long-lived indeed and should result in higher share of the market for the companies that presumably are predating by using that strategy. Such has not been the case.

Senator **Metzenbaum**. Well, apparently, you and I do not hear the same thing. You say the number of stations is the relevant factor. I say the volume of sales is the relevant factor, and I have just read you some of the statistics from Lundberg Reports as well as the DOE report.

You just are totally bland about that and say, well, the number of stations is the relevant point. I do not think it really has anything to do with it at all. It is like having great, big supermarkets as compared to little grocery stores. There may be as many little grocery stores now, but the share of the market certainly is not the same as it used to be.

Mr. **Rowe**. Senator Metzenbaum, the Lundberg figures also report that the greatest growth in unit volume through marketers has been through multijobber units and through other independent marketers.

So, if refiners were somehow to predate on their own distribution system, which would cost them sales, money, and lower refinery unit operations, they would still have to face the independent marketers who would be still competing against them in the marketplace.

Senator **Metzenbaum**. Mr. Rowe, you would like to take me over to the statistics and I want to take you to the independent gasoline dealer who is driven out of business by predatory pricing practices and gets no protection from his Government agency charged with that responsibility—the same one that goes out to Washington State and says the laws now are quite adequate to provide protection in order to help defeat legislation in Washington State.

What I am concerned about is the failure of your agency to act as it used to act in years gone by and has failed to act in connection with any predatory pricing cases since Mr. Miller took over.

Mr. **Rowe**. Senator Metzenbaum, I already spoke on predatory pricing. If anyone comes to us and has a plausible case as to why someone would be predating against them, especially someone with 8 or 9 percent of the market, we would be more than glad to look at it, and we look at these claims all the time.

Senator **Metzenbaum**. I have no further questions.

Senator **McConnell**. Senator Grassley has joined us. I would like to call on him at this point.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator **Grassley**. Thank you, Mr. Chairman.

The questions I was to ask this morning have already been addressed. I want to remind the committee, though, that this was a very close vote on this bill 2 years ago. I remember I supported it.

I will now, 2 years later, look at the record again, but at this point I see a need for it, as I did previously, however, I am willing to look at the record to examine any new information and invite members of the committee who might see new information that those of us who supported it should take notice of—I would invite that information to be brought to our attention.

Senator **McConnell**. Thank you, Senator Grassley.

Thank you very much, Mr. Rowe. We appreciate your coming.

Mr. **Rowe**. Thank you.

[Prepared statement and letter follow:]

TESTIMONY OF THE STAFF OF THE
FEDERAL TRADE COMMISSION
before the
COMMITTEE ON THE JUDICIARY
# of the
UNITED STATES SENATE

presented by

RONALD B. ROWE

ASSISTANT DIRECTOR

BUREAU OF COMPETITION

Chairman Thurmond and Members of the Committee: thank you for this opportunity to present the views of the Federal Trade Commission's staff on the effects on competition and consumers of proposed Senate Bill No. 1140, the "Motor Fuel Sales Competition Improvements Act of 1985." This bill is similar to other legislation offered in the Senate and House, and in state legislatures, to rectify purported market failures and antitrust problems in gasoline markets. The Commission has previously approved comments by its staff opposing such legislation. In addition, the Committee has previously received the Commission's July 9, 1985 letter opposing S. 1140 (a copy of which is attached). This statement will summarize the Commission's previously stated opposition.

Summary of Opposition to S. 1140

The bill's stated purpose is to "amend the antitrust laws in order to preserve and promote wholesale and retail competition in the retail gasoline market and to protect the motoring safety of the American public." The Commission endorses these goals, but opposes the specific provisions of S. 1140. There is no credible evidence that the anticompetitive practices the bill purports to correct exist. Present federal laws are sufficient to remedy predatory pricing and collusion should these practices occur. Moreover, legislated lessor-lessee contract alteration and vertical divorcement are unnecessary, and would increase the costs of gasoline distribution, eliminate legitimate price competition, and raise prices for motor fuel to consumers.

1. **There is no credible evidence of anticompetitive conduct by refiners and producers to support S. 1140.**

If the purpose of S. 1140 is to protect gasoline franchisees of major, integrated refiners from unfair and anticompetitive practices directed against them by their suppliers, the bill is unnecessary. There is simply no credible evidence that such practices are either occurring or could successfully be used to harm gasoline dealers. In fact, a DOE examination of the state of competition in gasoline marketing in the United States, both before and after the decontrol of petroleum refining and marketing in 1981, indicates that gasoline franchisees have not been and are not likely to become targets of anticompetitive practices by refiners. Claims that refiners "subsidize" their own outlets to harm their franchisee dealers are unsubstantiated.

The studies also indicate that refiners have no logical motive to wage war on their franchised dealers. Rather, refiners and their franchised outlets are linked by mutual interest, because lessee-dealers are the predominant distribution system for direct gasoline sales by major, integrated refiners. Only a small percentage of the gasoline stations in the United States are operated by major, integrated refiners.

Moreover, the Commission's September 1982 study, Mergers in the Petroleum Industry, concluded that wholesale and retail gasoline markets were unconcentrated at the national level and, in general, only moderately concentrated in particular geographic regions. Given the continued importance of the branded, franchised marketing distribution system to major refiners, traditional antitrust and economic theory indicate it would be irrational for an individual refiner to charge its franchisee-dealers prices that would cause them to either secure new sources of supply or go out of business. The likely results of such irrational behavior in the current era of reduced gasoline demand

and plentiful supplies would be that the refiner would face a decrease in market share, an increase in excess capacity, and higher per unit costs. Thus, individual gasoline franchisors are not likely to engage in predation against the mainstay of their own retail distribution system, their franchised dealers.

2. Monopolistic and predatory behavior is subject to prosecution under existing federal laws.

Even if predatory or monopolistic behavior by refiners were found to exist, passage of S. 1140 is unnecessary. S. 1140's prohibition against refiner or producer collusion is unnecessary because such conspiracies are subject to the criminal and civil prohibitions of the Sherman Act and Section 5 of the FTC Act.

Section 2(a) of the bill, prohibiting individual refiners or producers from requiring their dealers to buy more than 70 percent of their gasoline from them, and prohibiting limitations by refiners and producers on conversion of existing storage tanks for alternative gasoline supplies, also is unnecessary. There is no evidence of widespread anticompetitive abuses associated with minimum volume requirements and restrictions on usage of refiner-owned storage tanks in current franchise contracts.

3. Legislated lessor-lessee contract alteration and vertical divorcement are unnecessary and would raise costs, diminish price competition, and raise gasoline prices to consumers.

Finally, S. 1140 should not be used to redress perceived contractual imbalances between refiners or producers and their lessee-dealers; Congress has already addressed this concern through its earlier passage of the Petroleum Marketing Practices Act of 1978 ("PMPA"). The legislative history of the PMPA shows that it was the intent of the Congress to balance the franchise relationship in a more equitable manner. S. 1140 should not be allowed to alter this balance without a full study of its effects.

Passage of S. 1140 in fact may be injurious to franchisees, because its requirements would appear to lessen the value of a franchised dealer network to an integrated refiner. Therefore, although direct refiner-operated stations presently constitute only a small percentage of all retail gasoline stations, passage of S. 1140 might encourage abandonment of franchised dealer outlets in favor of company-controlled outlets, assuming that the marketing divorcement part of S. 1140 would not be enacted.

The antitrust laws deter firms from engaging in predatory behavior, but, at the same time, allow them to lower their costs through vertical integration. In contrast, the prohibition against refining/marketing integration found in S. 1140 would arbitrarily require marketing divorcement according to the amount of aggregate refinery capacity of certain refiners. By denying firms the possibility of increasing efficiency through vertical integration, this legislation could add costs to the distribution of gasoline in the United States, costs that would be borne by consumers.

The potential harm of divorcement bills is illustrated by the experience of Maryland, which has already enacted legislation similar to that now being proposed by S. 1140. One study, described by DOE as perhaps "the best empirical analysis of the effects of Maryland's divorcement law," has estimated that Maryland consumers are now paying millions of dollars more per year than they would have been paying if the divorcement law had not been enacted.

Conclusions

Drawing upon an ongoing examination of energy competition issues, the Commission concludes that the proposed (1) alteration of existing gasoline supply contractual obligations, and (2) vertical divorcement of retail gasoline stations, are likely to have harmful consequences for both competition and consumers. In short, S. 1140 would not enhance consumer welfare, but rather would serve to insulate one business segment, retail gasoline dealers, from the rigors of the free market.

As competition among gasoline marketers has intensified in recent years, retail dealers have faced an increasing need to change with the times by operating more efficient, high-volume outlets. Protectionist legislation such as S. 1140 would interfere with this competitive process, and would result in higher consumer prices.

For these reasons, S. 1140 should not be enacted.

Thank you for your attention, Mr. Chairman. I would be pleased to answer any questions you or other members of the Committee may have.

FEDERAL TRADE COMMISSION
WASHINGTON D.C. 20580

OFFICE OF
THE CHAIRMAN

July 9, 1985

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of May 20, 1985, requesting Federal Trade Commission views on S. 1140, the "Motor Fuel Sales Competition Improvements Act of 1985." This bill is similar to other legislation offered in the Senate and House, and in state legislatures, to rectify purported market failures and antitrust problems in gasoline markets. The Commission's staff has previously opposed such legislation.[1] The Commission is opposed to the enactment of S. 1140 because this bill is anticompetitive and would be harmful to consumers.

Description of S. 1140

The bill's stated purpose is "[t]o amend the antitrust laws in order to preserve and promote wholesale and retail competition in the retail gasoline market and to protect the motoring safety of the American public." Section 2(a) of the bill would make it unlawful for any petroleum producer or refiner, "directly or indirectly, to require any retail motor fuel dealer to purchase more than 70 percent of the monthly retail sales of motor fuel from such producer or refiner or to prohibit the use or conversion of storage tanks and dispensers as provided in subsection (c)."

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[1] The Commission's staff has filed comments opposing passage of South Carolina House Bill 2663 (marketing divorcement and below cost selling); North Carolina Senate Bill 73 (below cost selling); and Washington Senate Bill 3418 (marketing divorcement). The FTC's Bureau of Competition Assistant Director Ronald B. Rowe has testified in opposition to U.S. House Resolution 5023 in 1984 (below cost pricing), and in opposition to H.R. 1362 in 1981 (marketing divorcement and below cost selling).

Section 2(b) of the bill would make it unlawful for a producer or refiner to collude with any other producer or refiner to require retail dealers to carry more than 70 percent of the suppliers' fuel or to prevent use of storage tanks to store other suppliers' fuel.

Section 2(c) would require trademarked dealers to notify their customers if they carry and dispense motor fuel at one or more pumps that is not supplied by the refiner or producer whose trademark or trade name is displayed by the dealer.

Section 3 would make it unlawful for any "large integrated refiner to operate any motor fuel service station in the United States," although such refiners are not prohibited under Section 4 of the bill from owning the underlying assets of the service station, as long as the refiner does not participate in any way in operating the station. The prohibition in Section 3 would become effective "one year after the date of the enactment of this Act." [Sec. 6(c)]

Under Section 5 of the bill, a "large, integrated refiner," as used in Sections 3 and 4 of the bill, is defined as a refiner that has thirty percent crude oil self-sufficiency and whose total refining capacity exceeds 175,000 barrels per day.

Section 6 of the bill would authorize a federal district court civil action brought by the Federal Trade Commission to prevent or stop violations of S. 1140, "or any regulation promulgated thereunder," and gives the district courts certain jurisdiction to restrain violations, to require compliance, and to "impose monetary penalties under the same terms and conditions as provided in Section 5(m)(2)(A) of the Federal Trade Commission Act, and to order such additional equitable relief as it deems appropriate." [Sec. 6(a)] Private civil actions by "any other person affected" by a violation of S. 1140 would allow the successful plaintiff to obtain monetary damages and equitable relief in any district "in which the plaintiff resides or is doing business, or in which the defendant resides, or is doing business." [6(b)(1) and (2)]

Finally, S. 1140 would require the Commission to "prescribe regulations for the collection of information" necessary to determine which refiners would and would not be permitted to operate retail gasoline outlets. [Sec. 6(d)(1)]

Summary of Opposition to S. 1140

S. 1140, although facially different from the myriad of other retail divorcement and "below-cost" pricing legislation unsuccessfully urged in the United States Congress and in many state legislatures, is but a new variety of the same species. Although such bills are usually described by their proponents as necessary to protect dealers from the "monopolistic" and "predatory" practices of their suppliers, no credible evidence has been found that gasoline suppliers have engaged in such practices. None of the provisions of S. 1140 would in any way increase competition; the bill's effect rather would be to protect and increase profit margins for branded gasoline dealers as well as other gasoline dealers. Price competition would be thereby debilitated and the result would be higher gasoline and motor fuel prices for consumers in all regions of the country.

The Commission opposes the specific provisions of S. 1140 because: (1) there is no credible evidence that the anticompetitive practices the bill purports to correct exist; (2) present federal laws are sufficient to remedy predatory pricing and collusion should these practices occur; and

(3) legislated lessor-lessee contract alteration and vertical divorcement are unnecessary, and would increase the costs of gasoline distribution, eliminate legitimate price competition, and raise prices for motor fuel to consumers.

1. There is no credible evidence of anticompetitive conduct by refiners and producers to support S. 1140.

Proponents of legislation like S. 1140 maintain that its passage is necessary to protect gasoline franchisees of major, integrated refiners from unfair and anticompetitive practices directed against them by their suppliers. They argue that it is unfair for refiners to operate retail gasoline outlets in competition with their franchised gasoline dealers. According to this view, the refiners "subsidize" their own retail operations by providing gasoline to their own outlets at internal transfer prices that are both "below cost" and below the wholesale prices charged to independent dealers.

We are aware of no evidence that such subsidization has occurred or is occurring anywhere in the United States. In fact, an examination of the state of competition in gasoline marketing in the United States, both before and after the decontrol of petroleum refining and marketing in 1981, indicates that gasoline franchisees have not been and are not likely to become targets of anticompetitive practices by refiners. Following enactment of Title III of the Petroleum Marketing Practices Act in 1978, 15 U.S.C. § 2841, the Department of Energy ("DOE") was required to study whether the alleged "subsidization" of retail gasoline operations of major refiners actually existed and, if it did, whether the practice was predatory or anticompetitive. The final report to Congress, published in January 1981,[2] was based on an extensive study of pricing data in several Standard Metropolitan Statistical Areas for 1978, as well as on internal oil company documents subpoenaed by the DOE staff. The study concluded that there was no evidence of such subsidization. In 1984, DOE published a report that further substantiated its 1981 findings.[3]

In its 1984 report, DOE presented the results of an extensive study of gasoline marketing since decontrol. DOE concluded that the increased pressures on gasoline retailers since 1981 were not caused by anticompetitive behavior by oil companies. Rather, the decline in the overall number of retail outlets and the intensification of competition among gasoline marketers could be attributed to decreased consumer demand for gasoline and a continuing trend toward the use of more efficient, high-volume retail outlets.[4] Statistics published by DOE and industry publications, such as the Lundberg Letter, indicate that since federal controls were removed in January 1981, the public has been the beneficiary of vigorous price competition.

DOE case studies have revealed no instances of predatory behavior on the part of major gasoline refiners. Instead, the studies indicate that the fortunes of refiners and their franchised outlets are inextricably merged, and that the two groups "form a mutually supporting system backed by company advertising and promotion."[5] Indeed, lessee-dealers have continued to be by far the largest outlet for the direct gasoline sales of the major, integrated refiners.[6] In fact, only 3.3 percent of the gasoline stations in the United States are operated by the major, integrated refiners themselves.[7]

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[2] DOE, Final Report: The State of Competition in Gasoline Marketing, January 1981.

[3] DOE, Deregulated Gasoline Marketing: Consequences for Competition, Competitors, and Consumers, January 1984 draft report [hereinafter cited as 1984 DOE Report].

[4] *Id.* at 125-32.

[5] *Id.* at ii.

In the context of merger analysis, the Commission's September 1982 study, Mergers in the Petroleum Industry, concluded that wholesale and retail gasoline markets were unconcentrated at the national level and, in general, only moderately concentrated in particular geographic regions. Given the continued importance of the branded, franchised marketing distribution system to major refiners, traditional antitrust and economic theory indicates that it would be irrational for an individual major refiner-franchisor to charge its franchisee-dealers prices that would cause them to either secure new sources of supply or go out of business. The likely results of such irrational behavior in the current era of reduced gasoline demand and plentiful supplies would be that the refiner would face a decrease in market share, an increase in excess capacity, and higher per unit costs. Thus, individual gasoline franchisors are not likely to engage in predation against the mainstay of their own retail distribution system, their franchised dealers.

2. Monopolistic and predatory behavior is subject to prosecution under existing federal laws.

Even if predatory or monopolistic behavior by refiners were found to exist, it could be reached under the Sherman Act, the Clayton Act, or the Federal Trade Commission Act.

Section 2(b)'s prohibition against refiner or producer collusion is unnecessary because such conspiracies are subject to the criminal and civil prohibitions of the Sherman Act. Conspiracies in restraint of trade also violate Section 5 of the FTC Act.

Section 2(a), prohibiting individual refiners or producers from requiring their dealers to buy more than 70 percent of their gasoline from them, and prohibiting refiners and producers from preventing their dealers from converting existing storage tanks for alternative gasoline supplies, also is unnecessary and unwise. These provisions might be justified if there were evidence of widespread anticompetitive abuses.

As discussed in the last section, however, allegations of oil company anticompetitive practices and behavior are simply not supported by any credible evidence. Certainly, as a group, the major refiners have not been engaged in predation against their branded franchisees, who constitute the mainstay of their distribution network. Nor does it seem reasonable to conclude that individual oil producers and refiners have in any way been attempting to drive their own franchisees out of business by operating company-owned retail outlets.[8]

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[6] In 1981, the eight largest refiners, who, in the aggregate, accounted for about half of all gasoline sales, sold approximately eight times more gasoline through lessee-dealers than through refiner-owned retail outlets Id. at 146 (Table A-10).

[7] Lundberg Letter, Vol. XI, No. 36, July 6, 1984, at 3.

[8] See supra notes 5 and 6 and accompanying text.

3. Legislated lessor-lessee contract alteration and vertical divorcement are unnecessary and would raise costs, diminish price competition, and raise gasoline prices to consumers.

One proponent of the bill contended that Section 2 of S. 1140 is necessary because it "extends throughout the industry the settlement achieved in Bogosian v. Gulf Oil Corp.," 1985-1 Trade Cas. (CCH) ¶ 66,510 at 65,548 (E.D. Pa. 1985).[9] However, the litigation in Bogosian never resolved the issue of whether supplier abuses had actually occurred. The Bogosian settlement preceded any ruling on the merits of the plaintiff's antitrust claims, and the Bogosian judge resisted attempts to enlarge or modify the consent decree in ways that are now being urged by the proponents of this legislation. Indeed, District Judge VanArtsdalen gave the following response to disappointed members of the Bogosian class suggesting that their claims would likely have been found without merit at trial:

> The "risks" of establishing liability in this case were great. For both the damage and injunctive class, proving liability at trial would have been extremely difficult. The plaintiffs clearly had no direct proof of a conspiracy.

[Bogosian v. Gulf Oil Corp., 1985-1 Trade Cas. (CCH) ¶ 66,510 at 65,548 (E.D. Pa. 1985)] Judge VanArtsdalen also suggested that, without such direct proof, proving antitrust violations "would have been a monumental task for plaintiffs." Id.

The district judge also gave the following response to plaintiffs who complained that the relief on installation of individual fuel tanks and pumps was inadequate:

> As to the contention that the right to install individual tanks and pumps or take other steps to de-brand a station is purely illusory, the agreement at least recognizes the existence of such a right. Only time will tell whether and to what extent this right may be exercised by lessee-dealers. If, in fact, as plaintiffs have contended, supplies of gasoline could be purchased by service station dealers at a substantially reduced price if allowed to be purchased on a free and open market, undoubtedly some will find it economically advantageous to install separate tanks and pumps. [Id.]

In sum, although the proposed requirements of Sections 2(a) and 2(b) of S. 1140 would greatly expand the agreed-to relief in the Bogosian settlement, their enactment, without extensive further analysis would appear to ignore the sense of Judge VanArtsdalen's opinion of the allegations and claims for relief by the Bogosian plaintiffs.

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[9] Supra note 7 and 8. Plaintiffs in this class action private suit charged that the major oil company defendants conspired by implementing and maintaining a system of gasoline distribution in which the defendants would own and lease gasoline stations to independent operators so as to prevent plaintiffs from buying their gasoline supplies from anyone but their lessors. The restraints were enforced, according to plaintiffs, by illegal tie-ins conditioning the lease of a service station and the use of the refinery brand name and trademark upon a dealer buying all his gasoline from the refiner-lessor.

Moreover, to the extent that S. 1140 is intended to redress imbalances between refiners or producers and their lessee-dealers, Congress has already addressed this concern through its earlier passage of the Petroleum Marketing Practices Act of 1978 ("PMPA"). The legislative history of the PMPA shows Congressional concern over alleged abuses of the franchise relationship.[10] Because of perceived unequal bargaining positions between major refiners and their individual dealers, franchise agreements were regarded as adhesion contracts in many instances. For that reason, the PMPA represented Congress' legislative solution to balance the franchise relationship in a more equitable manner. In contrast, S. 1140 would abandon such a balanced approach and skew the balance sharply in favor of gasoline dealers. Such an alteration without a full study of its effects is clearly not warranted and may be injurious rather than helpful to franchisees. This is because the requirements of S. 1140 would appear to lessen the value of a franchised dealer network to an integrated refiner. Although direct refiner-operated stations presently constitute only a small percentage of all retail gasoline stations,[11] passage of S. 1140 might encourage abandonment of presently favored franchised dealer outlets in favor of company-controlled outlets, assuming that the marketing divorcement part of S. 1140 would not be enacted.

Finally, the enforcement standards developed over the years in federal case law under the Sherman, Clayton, and FTC Acts and their remedial provisions, deter firms from engaging in predatory behavior, but, at the same time, allow them to lower their costs through vertical integration. In contrast, the prohibition against refining/marketing integration found in S. 1140 would arbitrarily require marketing divorcement according to the amount of aggregate refinery capacity of certain refiners. By denying firms the possibility of increasing efficiency through vertical integration, this legislation could add costs to the distribution of gasoline in the United States, costs that would be borne by consumers. Prices would also rise as a result of the elimination of competition from refiner-owned stations, which tend to be low-cost, gasoline-only outlets.

The potential harm of divorcement bills is illustrated by the experience of Maryland, which has enacted divorcement legislation similar to that now being proposed by S. 1140. Economists in one study, described by DOE as perhaps "the best empirical analysis of the effects of Maryland's divorcement law,"[12] have estimated that Maryland consumers are now paying over $15 million dollars more per year than they would have been paying if the divorcement law had not been enacted.[13]

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[10] *See* Senate Report No. 95-731, 95th Cong., 2d Sess., 15-19, 29-43 ("Senate Report").

[11] *See supra* note 6 and accompanying text.

[12] 1984 DOE Report, *supra* note 5, at 105.

[13] *See* Barron & Umbeck, *A Dubious Bill of Divorcement*, Regulation, Jan.-Feb. 1983, at 29. *See also* Testimony of Pester Corp., Crown Central Petroleum Corp., on Oct. 21, 1981, before the United States Senate's Judiciary Committee, on a nationwide divorcement bill, S. 326; Barron & Umbeck, *The Effects of Different Contractual Arrangements: The Case of Retail Gasoline Markets*, 27 J. Law & Econ. 313 (1984).

Conclusions

Drawing upon our ongoing examination of energy competition issues, we conclude that the proposed (1) alteration of existing gasoline supply contractual obligations, and (2) vertical divorcement of retail gasoline stations, are likely to have harmful consequences for both competition and consumers. In short, S. 1140 would not enhance consumer welfare, but rather would serve to insulate one business segment, retail gasoline dealers, from the rigors of the free market.

As competition among gasoline marketers has intensified in recent years, retail dealers have faced an increasing need to change with the times by operating more efficient, high-volume outlets. Protectionist legislation such as S. 1140 would interfere with this competitive process, and would result in higher consumer prices.

For these reasons, the Federal Trade Commission urges that S. 1140 not be enacted.

By direction of the Commission.

James C. Miller III
Chairman

Senator McConnell. Next, we will have a panel of service station dealers composed of Vic Rasheed, who is the director of the Service Station Dealers of America here in Washington; Ken Messer from Spartanburg, SC; Tracy Stanton, president of the Service Station Dealers of America; and Stan Patrick, of Louisiana.

Gentlemen, we would like to insert your prepared statements in the record. If you would hold your summaries to 5 minutes or less, we would appreciate it. And let me tell you I am going to be departing during your comments, but Senator Metzenbaum is going to be here for the duration of the hearing and will be back momentarily.

Who would like to lead off?

Mr. Rasheed. I would.

Senator McConnell. Mr. Rasheed.

STATEMENT OF A PANEL CONSISTING OF VICTOR RASHEED, EXECUTIVE DIRECTOR, SERVICE STATION DEALERS OF AMERICA, INC., WASHINGTON, DC; TRACY L. STANTON, PRESIDENT, SERVICE STATION DEALERS OF AMERICA, INC., COLUMBUS, OH; STAN PATRICK, EXXON DEALER, METAIRIE, LA; AND JAMES STOKER, PRESIDENT, GREATER WASHINGTON/MARYLAND SERVICE STATION ASSOCIATION

Mr. Rasheed. Thank you, Mr. Chairman. One of our panelists is an alternate, I think, whose name may be down as an alternate, and that is Mr. Stoker who is replacing Mr. Messer.

Mr. Chairman, we are very grateful for these hearings. We think they are imperative and I agree that the issue of divorcing major oil companies from retail operations is not new, but today there are tremendous upheavals in the structure of the domestic oil industry and these have given it a new, critical urgency, despite what you may have heard from the previous witness.

It has resulted in a tremendous concentration of power in the industry. In the last 18 months, we have witnessed several huge mergers which have cost thousands of jobs in States such as Pennsylvania and Delaware.

Other buy-outs of independent sources of crude, refined product and independent stations have ominous forebodings for competition in the gasoline industry. At a time when there is abundance of product, chains of independent brands now fly the flag of one of the majors to be guaranteed a steady supply of product.

The mergers and buy-outs, combined with market area withdrawals, have led to dangerous concentration levels in the wholesale gasoline market. In States such as West Virginia, Vermont, Delaware, and Ohio, the top four oil companies control over 80 percent of the gasoline market.

In States such as Kentucky, Arizona, Wyoming, and Maryland, the dominant oil companies have market shares ranging from 55 to 64 percent. At the heart of the trend is the change in enforcement policies of existing antitrust laws which has permitted the mergers.

The Justice Department takes the position that existing laws are adequate to protect the independent service station dealers of this country against the dual distribution problems which S. 1140 addresses.

Its new vertical restraint guidelines state that dual distribution problems will be handled as vertical restraints of trade and vertical restraints, aside from overt price-fixing, should be of no concern to the antitrust laws.

The Justice Department argues on the one hand that existing laws are sufficient to protect dealers against abuses by major oil companies, while on the other hand it is acting to strip away whatever protections those laws may offer.

Mr. Chairman, I would like permission to introduce a letter which I do not have in my testimony—a letter from the FTC to a House committee on PMPA hearings which admits that the antitrust laws do not cover the abuses against dealers; that they are not adequate. They simply do not address that problem, and that is on paper.

Senator **Metzenbaum** [presiding]. Without objection, that letter will be included in the record.

[Letter not received.]

Mr. **Rasheed**. The passage of S. 1140 would put an end to terribly anticompetitive practice that we term exclusive dual distribution. Refiners now pick and choose where they will market and how. The new strategy has been to increase the use of company-operated, gas-only locations to retail under this system of dual distribution.

The company operations sell at retail, often below the wholesale price at which product is sold to franchisee dealers of the same brand.

Senator **Metzenbaum**. Mr. Rasheed, would you elaborate on that? That is a question that I was asking Mr. Rowe. Can you tell us of any specifics or can you give us more details about companies selling at retail at less than the wholesale price paid by the dealers?

Mr. **Rasheed**. Mr. Metzenbaum, most of our testimony is centered on that and I am going to explain dual distribution just a little bit, and I would like to say at this point that the emphasis on dual distribution, using the company ops to undersell the franchisees, is really the heart of this whole hearing, as you say.

In fact, we can give you an historic evidence of its effect. Canada today has almost no independent dealers. All of the dealers are commissioned agents of major oil companies or some other oil companies. The prices are set by the oil companies. The dealers in Canada are now commission agents almost to a man.

They do not set pump prices. They are not competitors in the marketplace. And I think if anyone doubts what dual distribution can do to a marketplace, simply have a study made of Canada.

I would like to tell you how this dual distribution works. Its functions are, one, to place an artificial ceiling over the retail prices charged by the majors' branded dealers; and, two, to maintain an artificial floor under the wholesale or tank wagon price which the dealer pays to the major.

It raises the question of what the retail prices might be without exclusive dual distribution. If competition existed between oil companies for sales at wholesale to individual dealers, retail prices charged by dealers would likely be equal to or lower than the retail prices presently charged by company-operated stations.

Today, we are witnessing an unprecedented onslaught on dealers, as refiners use every devious plot hatched in a conniving mind to force targeted dealers out and replace them with high-volume company operations that dual distribution allows.

There is really no disputing this trend, and I will give you one example. Oklahoma City—there were 94 Texaco dealers 10 years ago; today, there are 15, plus 25 company operations that often retail below dealers' cost. They give away free car washes. They do not charge for credit cards, which costs the dealer generally about 4 cents a gallon. This gives them an advantage of 8 cents a gallon before the dealer pays his rent.

Senator **Metzenbaum**. Mr. Rasheed, as you know, we have a number of witnesses. Will you try to wind up?

Mr. **Rasheed**. Mr. Metzenbaum, I will end with this one statement. As we heard the previous witness try to argue, numbers are not the key. Numbers alone do not tell the whole story.

Between 1972 and 1981, company operations increased only 14 percent, but their sales volume increased 86 percent. In the same period, dealer sales volume dropped 36 percent, and this comes from a study done by ARCO, and it is called "Turmoil and Competition in Gasoline Marketing."

Thank you, Mr. Chairman, and I think that our witnesses will continue this litany.

[Prepared statement follows:]

TESTIMONY BY

VICTOR RASHEED

EXECUTIVE DIRECTOR

SERVICE STATION DEALERS OF AMERICA, INC.

Mr. Chairman, the issue of divorcing major oil companies from retail operations is not a new one, but today tremendous upheavals in the structure of the domestic oil industry have given it a new urgency, which cannot be ignored.

Background

On September 30, 1940, the Department of Justice filed a massive antitrust case against 22 major oil companies and the American Petroleum Institute.

It alleged that, "in the past 10 years the Department has been flooded with complaints from independents and consumers against various practices in the oil industry."

The complaint sought to have the defendants divest themselves of their marketing and transportation facilities.

In 1973 the Federal Trade Commission, in its complaint against the eight largest domestic oil companies, charged them with maintaining a non-competitive market structure. FTC stated that despite its success in winning cases, "the petroleum industry over the last 50 years has managed to circumvent the orders in many cases by subtle changes in policy or practices . . . ."

Congress has become increasingly aware since the 1973 oil embargo that the oil industry is not subject to effective regulation by government, or to the discipline of a competitive marketplace, and has no compulsion to promote or protect the public interest.

It is going to take legislation such as S.1140 to dictate this change.

With the drastic reorganization of the domestic oil industry due to market withdrawals and the largest mergers in history, the net result has been a tremendous concentration of power in the industry that rivals the era before the 1912 breakup of Standard Oil.

Even the famous seven sisters in the oil industry are no more . . . now there are only six. Independent refineries have disappeared. Alternate sources of supply are shrinking.

At a time when there is an abundance of product, chains of independent brands now fly the flag of one of the majors to be guaranteed a steady supply of product.

Here are some of the recent developments in the gasoline marketing industry which underscore the need for prompt passage of S.1140.

Job and Sales Concentration

In the last eighteen months we have witnessed several huge mergers which have cost thousands of jobs in states such as Pennsylvania and Delaware. However, several other buyouts of independent sources of crude, refined product, and independent stations, have omnious forbodings for competition in the gasoline industry.

The mergers and buyouts have combined with market area withdrawals to lead to dangerous concentration levels in the wholesale gasoline market. #1

In states such as West Virginia, Vermont, Delaware, and Ohio, the top four oil companies control over 80% of the gasoline market. In states such as Kentucky, Arizona, Wyoming, and Maryland, the dominant oil companies have market shares ranging from 55 to 64 percent.

Antitrust Enforcement

At the heart of this trend is the change in enforcement policies of existing antitrust laws, which has permitted these mergers which are unprecedented in our history.

We note the presence today of the Justice Department which takes the position that existing laws are adequate to protect the independent service station dealers of this country against dual distribution problems which S.1140 addresses.

On January 23, 1985, the Justice Department issued vertical restraint guidelines which state that dual distribution problems will be handled as vertical restraints of trade.

The current thinking of the Justice Department is that vertical restraints aside from overt price-fixing are of no concern to the antitrust laws, and even price-fixing should be subject to a "rule of reason" analysis.

We believe it is absurd for the Justice Department to argue on the one hand that existing law is sufficient to protect dealers against abuses by major oil companies, while on the other hand acting to strip away whatever protections those laws may offer.

Dual-Distribution

The passage of S.1140 would put an end to the terribly anticompetitive practice that we term "exclusive dual distribution", which is a combination of the worst abuses of exclusive dealing and dual distribution.

Refiners now pick and choose where they will market and how. The new strategy of gasoline marketing has been to increase the use of company-operated, gas-only locations to retail under this system of dual distribution. The company operations sell at retail often below the wholesale price at which product is sold to its franchisee dealers of the same brand.

Most refiners have a guaranteed market at premium prices for approximately 65% of their product through their captive-customer retailers. As the exclusive suppliers to their dealers, they set their own whlesale price. They can well afford to use a dual pricing system for the remainder of their product.

Under this phenomenon, the dual-distributor, a major oil company, engages in direct retail operations on a spot basis. The direct retail operations typically are located where they will offer intrabrand price competition to a substantial number of the dealers selling the same brand, and interbrand price competition to "independent" producers or refiners, i.e., those generally market at retail only. It is not at all unusual for those dual distributors to sell their gasoline at a retail price which is equal to or lower than their wholesale price.

The functions served by "exclusive dual-distribution" seem perfectly clear. These purposes are: (1) to place an artificial ceiling over the retail prices charged by the major's branded dealers, and (2) to maintain an artificial floor under the wholesale or "tankwagon" price which the dealer pays to the major.

The reaction of any retailer of any product other than gasoline, when charged a wholesale price which is equal to, or higher than his supplier's retail price for the same product, would be highly predictable and speedy: he would very quickly change suppliers. This response is not available, however, to gasoline dealers because they are captive customers, the victims of exclusive dealing by their branded suppliers. A Texaco dealer, for example, does not enjoy the practical alternative of purchasing his gasoline from Shell. Only open supply will open that door.

In order to avoid losing brand-conscious customers to his own exclusive supplier, the dealer must operate on a markup which is less than that which his business sense would dictate. It is this phenomenon which keeps the tankwagon price artificially high without any resultant loss in volume because the dealer's markup is kept artificially low.

To any of you who might question whether dealer tankwagon prices are in fact artificially high, we would refer you to the wholesale prices which your own state and local government entities pay. They probably are substantially lower than the tankwagon prices charged by the same suppliers. This dramatic difference in price is attributable to but one factor: competition. Simply stated, government entities are not captive customers and, as a result, do not pay artificially inflated prices for gasoline.

It might be said that direct retail operations by producers and refiners benefit the consumer because the prices charged are lower than those charged by dealers. Such reasoning, of course, does no more than beg the question of what these prices might be without "exclusive dual-distribution." If competition existed between oil companies for sales at wholesale to individual dealers, would not retail prices charged by dealers very likely be equal to or lower than the retail prices presently charged by producers or refiners in "company-operated" stations?

ONE THING SEEMS CERTAIN: ANY INDUSTRY WHICH CHARGES MORE FOR ITS PRODUCT AT WHOLESALE THAN IT DOES AT RETAIL DOES NOT HAVE LOWER PRICES FOR CONSUMERS AS ITS LONG RANGE GOAL.

Dual-distributon totally ignores its devastating effect on retailers of the same brand. Refiners still mercilessly pressure them to sell a required quota of gas, either by being more competitive, (sell below their wholesale cost) open 24 hours, or agree to a conversion to a gas-only, convenience store operation by having their bays demolished and give up their service business.

Discriminatory

Oil companies repeatedly make headlines across the country with their unfair tactics in trying to expand their company operations at the expense of their dealers. In California, a dealer who owns his location, after signing a supply agreement with Texaco, had his Texaco signs removed for six months while the company opened up a new company operation nearby. The company-op complete with signs, proceeded to sell product 3.7¢/gallon below his wholesale cost; did not charge customers the 3% credit card fee the dealer had to pay, (about 4¢ per gallon) and gave away a free carwash. #2 + #3

The media is happy to add to the poor image of oil companies by exposing these tactics. Recent court decisions have seen awards of four and five million dollars against oil companies for similar discriminatory tactics.

Onslaught

However, the onslaught on dealers continues, as refiners use every devious plot hatched in a conniving mind to force targeted dealers out and replace them with the high-volume company operations that dual-distribution allows. There is no disputing this trend.

In Oklahoma City, there were 94 Texaco dealers 10 years ago. Today there are only 15 plus 25 Texaco company-operations that often retail below dealer's cost, give away free carwashes and do not charge for credit cards. This gives the company-op up to an 8¢/gallon advantage before the dealer pays his rent, which may be another 5¢/gallon.

In Olympia, Washington, a replay. Thirty-five Texaco dealers were reduced to three in a 90-day period last year. The company made renewal terms so onerous with rent increases that the dealers quit, forced to accept economic termination. Texaco now has at least 1,000 System 2000 company operations which feature self-serve units with convenience stores. Each has a sales volume equivalent to four average stations.

Numbers alone do not tell the whole story. Between 1972 and 1981, company-operations increased only 14%, but their sales volume increased 86%. In the same period, dealer sales volume

dropped 36%, according to Arco's study, "Turmoil and Competition in Gasoline Marketing".

Other companies are involved in similar marketing maneuvers. Mobil has a requirement for all lease renewals that the dealer must agree to relinquish his service bays to be converted into a gas-only type operation, or be terminated. In many cases, such a conversion is the first step to company operation. Another dealer, persuaded to agree to conversion by high-profit projections done by the company (Arco), went bankrupt and the company took it over as a company-op. He was recently awarded $4.2 million for fraud.

Threat to Service and Repair Facilities

The main targets have been full-service dealers with maintenance and repair facilities. The resulting attrition of these stations has caused a crisis for American motorists. Last winter many motorists risked death in below zero cold when they were stranded for days because of inadequate emergency and repair facilities.

Even though the number of outlets able to offer service and repairs have declined drastically, the volume of automobile service and repair done by them has increased 51% in the past three years (Hunter Publishing Survey). This indicates the growing demand for their services even as their numbers shrink.

SSDA Survey

Ever since the Supreme Court upheld the constitutionality of the Maryland divorcement law, refiners have spent millions of dollars in an effort to discredit that law. The most recent effort, and the most misleading, is the Arco-Barron-Umbeck report. The authors of that report took a survey of half the stations affected by divorcement, stations selected by oil companies, and claimed prices rose at those stations. They conveniently ignored the fact that federal price regulations caused that rise. (See Lundberg Letter attached.) #4

Mr. Umbeck then takes this figure, assumes it to be the long-term effect, and appears at every divorcement hearing nationwide, misleading legislators at every turn.

His study, and the American Petroleum Institute-Sorenson report are misleading because they use short-term figures from the price controlled era to study long-term effects in the decontrolled environment.

Our own survey deals not with econometric theorizing, but the actual results of divorcement in those cities which have divorcement laws. (See attachment.) #5

Our study shows that for the most popular grade of gasoline -- self-serve, unleaded regular -- three of the four lowest prices in the country, after adjusting for state and local taxes, are in the divorcement cities of Wilmington (Delaware), Baltimore (Maryland), and Washington, D.C.

Contrary to Mr. Umbeck's most insidious claim, Maryland dealers have consistently been the most competitive in the country as reflected in their very low markup on gasoline.

Immediately after decontrol, and full implementation of divorcement, Baltimore dealers had the lowest markup on leaded regular and unleaded regular gasoline in the country.

In short, the Arco-Barron-Umbeck report is a confusing, academic exercise that has nothing to do with the real world.

We are deeply disturbed that the Federal Trade Commission has recently engaged in a publicity campaign promoting the Arco-Barron-Umbeck study and testimony by a small refiner at the 1981 hearing on S.326 as proof that divorcement does not work.

If the FTC had bothered to check the record or with other interested parties, they would have found that their evidence does not withstand close scrutiny. #6

The Outlook

The dual distribution system, the concentration of power by fewer oil companies and the lack of alternate sources of supply, will inevitably lead to a type situation that now exists in Canada.

Five refiners now control distribution. By using company-ops that have undersold their franchised dealers by 40¢ per gallon, dealers were forced to give up their dealer status and become commissioned agents, receiving a commission on gallons sold at the price set by the company. Today, almost every operator in Canada has his retail price set by his company. He has no rights as an independent dealer. He does not compete in the marketplace. A government inquiry has alleged Canadian motorists have been overcharged billions of dollars for gasoline. Oil companies are charged with inflating the dealer wholesale price at 27¢ above the true wholesale price.

The U.S. domestic gasoline market has always been most competitive in the world, mainly because there are still more than 100,000 independent retailers, (about one-half of the 1973 figure) competing with each other.

Wholesale Pricing

The most important factor to affect retail prices is the wholesale price set by refiners. In the glut situation which has prevailed for several years, competitive factors had some restraints on the price. Today, competitive restraints are ending.

In a period between January 30 and June 14, the wholesale price for gasoline charged by U.S. refiners experienced unprecedented, unexplained increases totalling 11-15 cents per gallon for different parts of the country.

The price of crude oil on June 14, 1985, was about $27 per barrel. The price of crude for that period in 1984 was over $29 per barrel but the average wholesale price of gasoline in June 1984 was almost four cents per gallon less. Why?

Applying the commonly used indicator of 2-1/2¢ per gallon increase or decrease for each $1 change in the per barrel price of crude, this would support charges that wholesale prices have been at least seven cents per gallon higher than can be justified by crude oil prices. It also supports allegations that our new concentrated domestic oil industry finally has the power to insulate itself from world oil prices and set wholesale prices for American consumers at any level it chooses.

If oil companies were divorced from retailing, they would not be able to engage in dual distribution through company-operations and would have to engage in wholesale competition between themselves at the refinery level to give their retailers an edge over competition.

In reporting out this bill, this committee can do our great oil companies a tremendous service by helping them improve their unsavory image with the American public. It can contribute to the safety of motorists by guaranteeing the survival of full-service stations to provide maintenance and emergency services and also ensure a truly competitive gasoline market. It can help dealers by guaranteeing them their right to compete as small businessmen to serve their customers, the American motorist.

ATTACHMENT 1

LUNDBERG LETTER®

Weekly Vital Statistics and
Analysis in Oil Marketing

Published Fridays

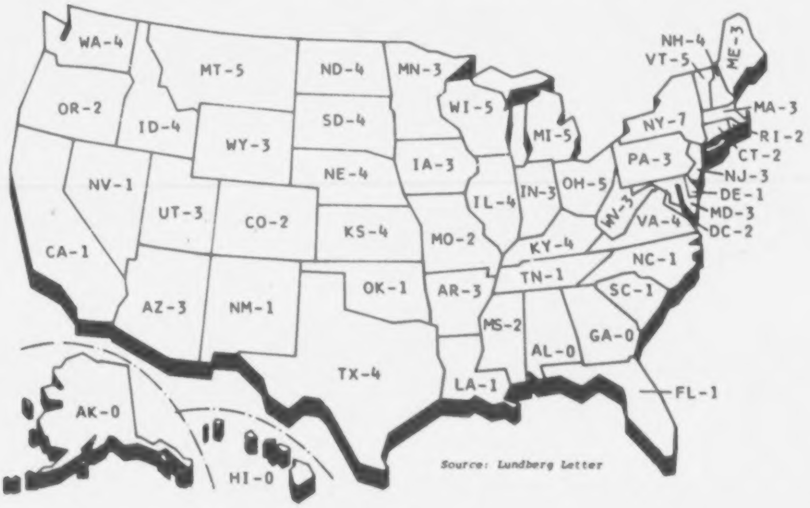
VOLUME XII NUMBER 30

MAY 24, 1985

Oil Company Retrenchment

WHAT DO PULLOUTS DO TO PEOPLE?

NUMBERS OF MAJOR OIL COMPANY PULLOUTS SINCE 1978 BY STATE



Source: Lundberg Letter

STRATEGIC PULLOUTS by most major integrated oil companies over the past several years tend to imply that their branded marketers and direct lessee dealers have to make new supply arrangements. But this is just the tip of the iceberg. Pullouts by majors are creating new breeds of marketers and retailers, as each wave of retrenchment leaves a more independent, untraditional distribution network in its wake. It may well be a corporate responsibility on the part of suppliers and marketers, major and independent alike, that is preventing degradation of the system.

Trilby Lundberg Editor Dan Lundberg APR, Publisher
Contributing Editors John Ayling Mark Emond Jan C. Lundberg Graphics Chu Shaw Business Manager Nella B. Shelton Production Craig P. Hardin

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SUMMARY OF MAJOR OIL COMPANY PULLOUTS SINCE 1978

Note: Chevron is making virgin retail entry in MI, MO, and OK, as asterisked.

	ARCO	AMOCO	GULF	CONOCO	EXXON	MOBIL	PHILLIPS	SHELL	SUN	TEXACO/GETTY	UNION	TOTAL
PADD I												
CT	A						P					AP
DC	A										Up	AU
DE	A											A
FL									N			N
GA												--
MA	A				Ep		P					AEP
MD	A			C							Up	ACU
ME		O					P	S				OPS
NC				Cp								C
NH	A	O					P	S				AOPS
NJ	A			Cp			P					ACP
NY	A	Op	Gp	Cp	Ep			Sp		Tp		AOGCEST
PA	A			Cp						Tp		ACT
RI	A						P					AP
SC				Cp								C
VA	A			Cp					Np		Up	ACNU
VT		O	G		E		P	S				OGEPS
WV	A	O								Tp		AOT
PADD II												
IA			G			Mp				T		GMT
IL	Ap			Cp				Sp		T		ACST
IN	A			Cp						T		ACT
KS			G			M				T	Up	GMTU
KY		Op		Cp	E					Tp		OCET
MI	A		*Gp	Cp					N	T		AGCNT
MN			G						N	T		GNT
MO			*			Mp				Tp		MT
ND			G			Mp			N	Tp		GMNT
NE			G			M			N	Tp		GMNT
OH	A		Gp	Cp	E					T		ACGET
OK		O	*									O
SD			G			M			N	Tp		GMNT
TN									N			N
WI	A		G	Cp					N	T		AGCNT
PADD III												
AL												--
AR		O							N	T		ONT
LA										T		T
MS									N	T		NT
NM										T		T
TX	A	Op						Sp		T		AOST
PADD IV												
CO			G			M						GM
ID			G	Cp		M				Tp		GCMT
MT		O	G			M	P			T		OGMPT
UT			G			M					U	GMU
WY			G			M					U	GMU
PADD V												
AK												--
AZ			G	Cp				Sp				GCS
CA			G									G
HI												--
NV			G									G
OR		O	G									OG
WA		O	G				P			Tp		OGPT

Note: p= partial pullout.

Source: Lundberg Letter

ATTACHMENT 2

dealer's viewpoint
Serving California Service Stations and Auto Repair Shops

• Vallejo

June 1987

Texaco dealer files suit against company-run station

George Perry, a full-service Texaco dealer, may have lost as much as 25 percent of his trade to a new Texaco company-operated station that opened a few months ago just blocks from his station on Springs Road in Vallejo.

Perry, therefore, is bringing a lawsuit against Texaco Refining & Marketing, Inc. The legal action, which will be filed in the Superior Court of Solano County, charges breach of contract and fiduciary duty. The suit asks for damages and is supported by the California Service Station Association.

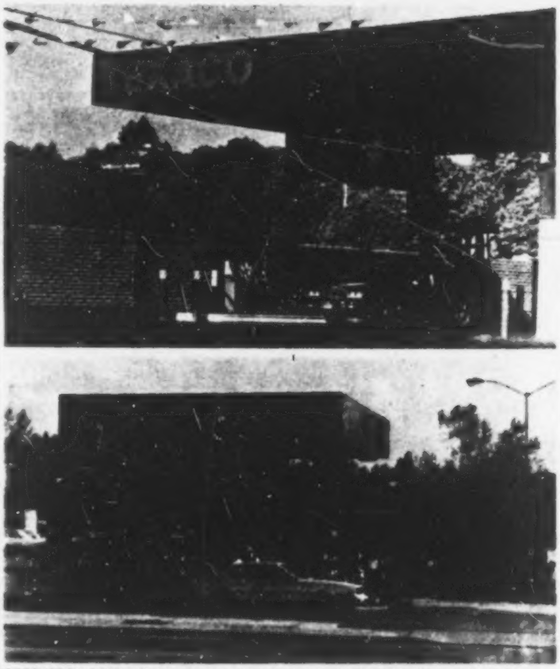
As described by the attorneys in the case, Peter Spinetta and Kim Bollinger, major oil companies have a fiduciary duty to their franchisees. That duty should prohibit them from directly competing with their dealers and doing anything that harms them.

Refiners are also governed by an implied covenant of good faith and fair dealing, the attorneys said, which should prohibit them from such practices as diverting business from a dealer-operated station to a company-operated station.

Perry says his loss of volume started in late March of this year, 3 days after the grand opening of the new System 2000 station at Lassen and Tennessee.

According to Perry, the company-run station has been selling gasoline at retail cheaper than he can buy it wholesale. On April 11, for example, the company station offered self-serve regular for $1.089/gallon. Perry's dealer tankwagon price was $1.062 at the time. With 6 percent sales tax, the total comes to $1.126, which means that Perry lost 3.7 cents for every gallon he sold at the price level established by the company station.

continued on page 2



PREDATORY PRICING. The Texaco company-operated station (above) has taken an estimated 25 percent of Texaco dealer George Perry's trade since it opened this spring — just blocks away. Perry's station (below), which operates at a decided price disadvantage, also went without signs for 6 months. Texaco spokesmen told Perry they couldn't get the signs replaced any faster. The company did, however, manage to build and open the company-run station during the same time frame. And it has signs, lots of them.

dealer's viewpoint

continued from page 1

There are other factors that make successful marketing difficult for Perry. For one thing, the company station offers a free car wash to every driver who buys 8 or more gallons of fuel. CSSA's Jim Campbell, who inspected the station recently, was offered a free hot wax for his automobile, as well as a free car wash.

As far as credit is concerned, the company station offers cash or credit transactions at the "same low price." Perry, however, says he has been pressured to offer motor fuel on a discount-for-cash basis.

"As a result," the dealer says, "the majority of my credit customers have switched to the new Texaco station."

To make matters even worse, Perry is forced to pay a 3 percent credit card processing fee on the credit transactions of those loyal customers who choose to stay with him. The company-operated station does not have to pay a processing fee.

Perry says he encountered other obstacles, such as a string of late deliveries of product. The major problem, however, involves a face lift at Perry's station that resulted in his being without signs for the period of November '84–April '85.

"It got so bad," Perry commented, "that some of my customers started taking bets on whether my station was a real Texaco station."

The problem of Texaco company-operated stations undercutting their dealers has been reported extensively in this newsletter over the last two years. The company-run station at University and Martin Luther King in Berkeley, for instance, was observed selling regular 6.2 cents per gallon under tankwagon (plus taxes) on May 12.

In the Sacramento market, predatory pricing by company-operated stations forced a large number of dealers to close their doors. Those locations, according to reports from the field, are now run by managers, agents, and employees.

The same situation appears to be true in the state of Washington, where Texaco has eliminated the dealer population with few exceptions. Vic Rasheed, executive director of the Service Station Dealers of America, reports that the dealer network in the Tacoma area was reduced from 35 dealers to 3 in a 90-day period. The dealer-run stations were converted to company outlets.

The company-operated station competing against George Perry's dealer-operated station offers cash or credit at the "same low price." The majority of the dealer's credit customers have therefore switched to the company station, Perry says. The credit customers who have stayed with the dealer cost him an additional 3 cents per gallon because of Texaco's credit card processing fee. This marketing disadvantage is in addition to Texaco's unfair pricing policy which allows the company to sell fuel at retail cheaper than the dealer can buy it wholesale.

Workers' comp pays $953,000

Earlier this year, $953,000 in dividends were distributed to participants in the workers' compensation insurance program sponsored by CSSA through the Moore Insurance Agency.

In memory of

Vern Patterson, a Diablo Valley Chevron dealer who operated multiple units passed away last month after losing his fight with cancer. He was a long-time supporter of CSSA, and he held office in the Diablo Valley Chapter.

Tank registration

The cost of registering underground storage tanks with your local government agency can be costly. In San Mateo County, a service station dealer responsible for four tanks will have to pay $100 for the first tank, $35 for each of the other three ($105), and a $28 surcharge for each of the four tanks ($112). The total: $317.

CSSA's executive director Jim Campbell comments, "Two years ago we said that the fee for storage tanks would be at least $300 per year. I thought it would take one to two years to arrive at that, but San Mateo has arrived at it already."

Dealer gets $200,000 award

A Superior Court jury in Martinez ruled on May 16 that Arco should receive $825,000 for a service station that was razed to make way for the new Concord Center office complex.

The dealer, John Hook, was awarded $200,000 for the loss of his business.

Hook, 64, who operated the station at Clayton Road and Galindo for 23 years, told the press he was satisfied with the decision.

Concord's attorney, Barry Lipman, argued to the jury that the dealer was entitled to only $30,000. Hook's attorney, James Cox, asked the jury to award the dealer $650,000 for the loss of his business.

The jury, which deliberated for 4 days, based its damage award on the net income loss Hook suffered when he was forced out of business, according to a report in the *Contra Costa Times*.

During the trial, which lasted 4 weeks, the jury heard expert testimony from CSSA's Jim Campbell and real estate broker/business consultant Munn Hinds.

Hinds, who has been active in the real estate field for 22 years, has appraised service station property extensively for nearly 5 years.

ATTACHMENT 3

The Service Station Dealers of America has requested its members notify them of instances where we suspect below cost selling by the oil companies that are in competition with their franchise dealers.

Recent raising of the dealer tankwagon price (DTW) and lowering of the posted street price (PSP) at several Texaco contractor locations has created this situation in my opinion.
As of Sunday, May 19, 1985, the DTW on posted gasoline was:

Regular Texaco Leaded	1.068
Regular Texaco Unleaded	1.118

As of Sunday, May 19, 1985, the PSP at Texaco contractor locations in northwest Harris County were:

Jones and West Rds.

Regular Texaco Leaded	1.049
Regular Texaco Unleaded	1.109

FM 1960 and FM 149

Regular Texaco Leaded	1.049
Regular Texaco Unleaded	1.109

Kuykendall and Louetta Rds.

Regular Texaco Leaded	1.049
Regular Texaco Unleaded	1.099

Greenwood Forest

Regular Texaco Leaded	1.059
Regular Texaco Unleaded	1.119

In my opinion, all the above locations are not only selling at below cost but are consistently operating at a net loss. This creates a false market in my trade area which does not reflect the true cost of delivering product to the customer.

I hope this information will be of benefit to you.

Terry Williams, owner
Jones Road Texaco
12303 Jones Road
Houston, Tx. 77070
(713) 469-1330

ATTACHMENT 4

LUNDBERG LETTER

Weekly Vital Statistics and
Analysis in Oil Marketing

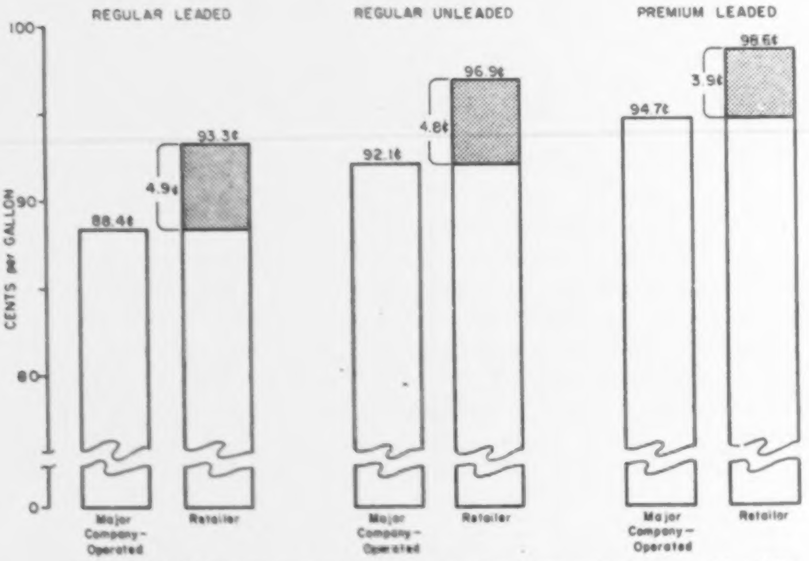
Published Fridays

VOLUME VI NUMBER 41
AUGUST 10, 1979

New Pricing Regulations

The Making of 'Predators'

COMPARISON OF U.S. CEILING PRICES AT COMPANY-OPERATED AND OTHER RETAIL OUTLETS



NEW REGULATIONS keep company-operated stations of refiners and jobbers at old ceiling margins. Nationally, these ceilings will keep company-op stations 3.9¢ gal. to 4.9¢ gal. below retailers who use the new 15.4¢ gal. ceiling margin. Average price differences that will result are shown above for the U.S. and on page 2 for regions.

Dan Lundberg, Publisher. Mark Emond, Editor-in-Chief. Lynn L. Beavers, Director of Research. William R. Keene, Graphic Presentation. Trilby Lundberg, Business Manager. Craig P. Nardin, Production.
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LUNDBERG LETTER

Weekly Vital Statistics and
Analysis in Oil Marketing

Published Fridays

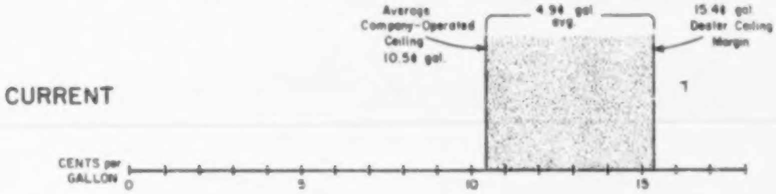
VOLUME VI NUMBER 47

SEPTEMBER 21, 1979

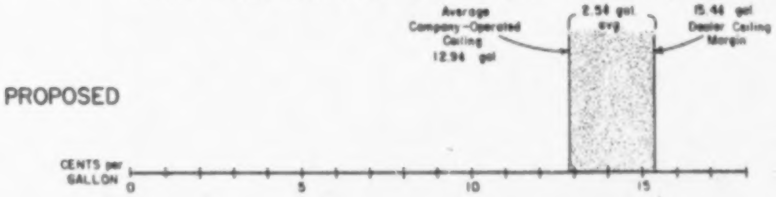
Look What They're Up To Now

Proposed new gasoline price ceilings won't end mandatory 'predatory' pricing, but will drive everybody berserk

AVERAGE AMOUNT OF 'PREDATORY' PRICING AT CURRENT CEILINGS



MINIMUM AVERAGE AMOUNT OF 'PREDATORY' PRICING AT PROPOSED CEILINGS



PROPOSED new gasoline price ceiling rules would eliminate some mandatory "predatory" pricing, but not all. At a minimum, there would still be a national average of about 2.5¢ gal. of required "predatory" pricing, compared with 4.9¢ now. But the means of achieving this aim are extremely complicated, and most jobbers couldn't do it anyway.

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What did our publisher Dan Lundberg say, August 1,

to NATIONAL CONGRESS OF PETROLEUM RETAILERS in Portland?

THE OREGONIAN, TUESDAY, AUGUST 14, 1979 3M B3

Gasoline profit margins draw criticism

By BETH FAGAN
of The Oregonian staff

The keynote speaker at the National Congress of Petroleum Retailers Monday urged the 500 service station dealers meeting in the Jantzen Beach Red Lion to "live within the law," but to resist government profit regulations "like hell."

Dan Lundberg, a former CBS news correspondent who is the publisher of a weekly national publication on vital statistics and analysis in oil marketing that has been widely quoted during the oil crisis, said that the U.S. Department of Energy, with its regulations on gasoline profit margins, has forced two choices on dealers: "civil disobedience or regimentation."

Lundberg, who is also president of Lundberg Survey Inc., a data gathering corporation that supplies information for the newsletter, said he didn't believe in civil disobedience, "although the NCPR has good reason to encourage it." Dealers won't be able to survive with present regimentation, he added.

To survive, Lundberg said dealers must mount a massive, grass-roots campaign to educate both the public and lawmakers with "gas station economics."

Lundberg said he came to Portland to "declare my personal support" for dealers who are faced with a quandary that he said the public doesn't understand.

Lundberg said that the Department of Energy's newest regulation, which restricts the markup of gasoline to 15.4 cents a gallon over acquisition cost for dealer stations, regardless of the type of service or grade of gasoline, "is going to wipe many (dealers) out."

"The smaller the station, and the more service they give, the more quickly they will have to go out of business," said Lundberg.

"The Department of Energy has said that governors can boost that markup 10 cents in their own states, providing they clear it with DOE's office of hearings and appeals," he said. "But governors don't want to get involved — the whole thing is a political hot potato."

Oregon Gov. Vic Atiyeh has requested a smaller increase for Oregon dealers.

Lundberg said that the Department of Energy's newest edict is the latest blow to retailers who use the new 15.4 cents per gallon ceiling margin.

"The latest regulation holds the company-operated stations of refiners and jobbers to the old ceiling margins, which are from 3.9 to 4.9 cents a gallon below the 15.4 cents per gallon maximum," said Lundberg.

"That's what's called 'predatory pricing,'" Lundberg said. "It gives company-operated stations a substantial competitive edge over other dealers."

Lundberg claimed that problems for both gasoline retailers and the public could be solved with decontrol of gasoline prices, "restoring us to the free marketplace."

He said that this year, gasoline prices went up an average of 22 cents a gallon. "However," said Lundberg, "only last November, the Department of Energy itself said that decontrol would cost the consumer only 2 cents to 4 cents a gallon extra in 1979."

In terms of supply, Lundberg said that inventories are "high enough" right now, but that he considers talk of high inventories "short-term."

He also said that on the basis of wholesale prices alone, the "linear curve" outlook will have the average price of gasoline up to $1.17 a gallon by the end of this year. "That's not a flat prediction," said Lundberg. "But that is the indication, as crude works its way through the economy."

ATTACHMENT 5

SSDA
SERVICE STATION DEALERS OF AMERICA

SERVICE STATION DEALERS OF AMERICA
PRICING ANALYSIS
of
RETAIL SERVICE STATION DIVORCEMENT AND CONSUMER PRICES

INTRODUCTION

A review of gasoline prices and dealer margins since the end of federal regulations and the full implementation of the divorcement law in Maryland, clearly demonstrates that consumer prices are not adversiy affected by divorcement legislation; and in fact, consumers have benefitted in the form of lower prices and greater availabliity of service.

Various oil company-sponsored, "studies" have claimed that divorcement legislation causes consumer price rises, and use these studies to confuse the issue, which is the real extent of oil company control of the retail marketplace.

The studies purport to analyze the effect of the Maryland divorcement law on prices, the nation's first, which went into effect on July 13, 1979, one year and one month after the Supreme Court upheld the law against oil company appeals.

BACKGROUND OF DIVORCEMENT'S IMPACT ON PRICES AND DEALER MARGINS

As noted by the Department of Energy in its 1984 draft report on deregulated gasoline marketing, the long term effects of divorcement are not clear, due to the fact that no one has undertaken to study them.

Existing oil companies studies have looked at the Maryland market in the years 1979 and 1980, when the gasoline marketing, prices, margins, and allocations were under strict federal control. In fact, what has been called "mandatory predatory pricing" existed during the periods studied by oil companies.

The Department of Energy regulations limited the margin or mark-up on a gallon of gas to 10.5 cents per gallon for company-operated stations, and 15.4 cents per gallon for dealer-operated stations. This was implemented on July 15, 1979, two days after divorcement took effect.

It is no wonder that, as the Barron-Umbeck study stated, "immediately after divorcement, prices rose at the divorced stations." The combination of short supply and gas lines in Maryland at that time, with the new federal regulations, mandated this result.

Nevertheless, at least one oil company study, (Arco-Barron-Umbeck) has attempted to take short term results, assume they are long term results, and come up with a "magic shock number" of consumer costs in order to persuade legislators not to enact divorcement legislation, thus allowing total oil company control of the retail marketplace.

The Arco-Barron-Umbeck study claimed that immediately after divorcement, both the divorced stations and stations in competition with them, as defined by the oil company operators, raised their prices solely as a result of divorcement. The authors claimed that the price increases occured in self-serve unleaded regular gas and full service gasoline. They then claimed that the national divorcement law pending before Congress would cost consumers $1 billion per year by making the following assumptions:

1) That the short term results would become the long term results, even though the short term results were mandated by federal regulations.
2) That the full-serve/self-serve ratio is 40-60%, when the actual ratio is 20-80%.

It is blatantly misleading to project tremendous costs to consumers based on full-service price increases, which Barron-Umbeck did. In Maryland, 80% of the gasoline is sold at self-service, at prices which are not only competitive but are among the very lowest nation in the nation. This is due to the intense competition between Maryland independent dealers, whose mark-ups on regular leaded and unleaded gasoline, are the lowest in the nation.

SSDA SURVEYS

SSDA reviewed the best available data from the Lundberg organization and compared retail prices and dealer mark-ups on regular leaded and unleaded gasoline from January, 1982 to December, 1984. The dates are very important, as no study has considered the effects of divorcement since its full implementation in Maryland at the end of November, 1981 and the end of federal regulations at the end of January, 1981.

DEALER MARGINS

SSDA reviewed dealer margins on regular leaded and unleaded gasoline from 1982 to 1984. Baltimore, Maryland, the leading divorcement city is compared to 42 other cities.

In direct contradiction of Barron-Umbeck, in January, 1982, immediately after the end of federal regulations and full implementation of divorcement in Maryland, dealer mark-ups on both regular leaded and unleaded gasoline were the LOWEST in the nation. If the economists were correct in their assumption that the short term effects would become the long term effects, this would not have occured.

This statistic is critical because the dealer has no control over wholesale costs such as for the product, transportation etc.; he controls only his margin and it is only his margin which is effected by divorcement.

If the Barron-Umbeck approach was adopted, that is to assume that dealer margins in Baltimore would remain constant, (lower) relative to those in other cities, then all sorts of claims could be made about how much divorcement would save consumers based on lower dealer margins. More research was needed and was done.

Barron-Umbeck claims that the increase in self-service prices in Maryland, was due to rises in unleaded regular gasoline, thus, implying that dealer mark-ups on this gasoline would be high as well.

Nevertheless, the data from 1982-1984 shows the Baltimore dealer mark-up as averaging 3.86 cents per gallon, second lowest to the Indianapolis, Indiana average of 3.78 cents per gallon (eight-one hundredth's of a cent lower). The national average for the period is 7.09 cents per gallon.

It appears then, that contrary to Barron-Umbeck claims of Maryland consumers paying about 2 1/2 cents per gallon for self-serve, unleaded regular, consumers actually pay 3 1/4 cents less per gallon.

This is borne out by a survey of retail prices in 63 cities done in July, 1984 by the Lundberg organization. After adjusting for local taxes of the four lowest unleaded, regular, self-serve prices, three were in divorcement cities namely, Wilmington, DE; Baltimore, MD; and Washington, D.C.

The divorcement cities were also significantly lower in their prices on regular gasoline at self-serve than their East Coast counterparts, and were competitive with West Coast prices which are generally lower due to gasoline refined from Alaskan North Slope Crude, which receives favorable windfall tax treatment.

The data conclusively shows that Maryland consumers have not been already affected by divorcement legislation and in fact, have actually saved money.

The Barron-Umbeck report also contains two other pieces of misleading innuendo with regard to the hours of operations of divorced stations, and the closing of stations affected by divorcement.

The study claims that stations are open fewer hours due to divorcement and that this is because service station dealers are free to set their hours because of divorcement. This is flatly wrong. The Petroleum Marketing Practices Act (PMPA) clearly allows refiners to set hours of operation at their stations, and in fact, the first case on point, Waldman v. Crown Central Petroleum, explicitly upheld the right of a refiner to terminate a Maryland dealer who did not keep the required hours of operation.

It also claims that 11% of the affected stations closed, calling it a "telling statistic." What this innuendo does not say, is that the 11% were 24 in number, 14 of which were acquired rebuilt, and re-opened by Amoco as dealer operations which far surpassed the performance of their company-operated predessors. The rest were picked up by other major oil companies. Only two obsolete 50-year old units actually closed.

It also does not say that the rate of attrition of service stations in Maryland is one-fourth the national average, preserving competition and emergency services for Maryland motorists. The BarronUmbeck report is clearly wrong in all of its major findings.

Other oil companies have claimed prices are lower in their Norfolk, Virginia company-operated stations than at their dealer-operated stations in Baltimore, Norfolk's Chesapeake Bay sister city.

SSDA reviewed all prices for Baltimore and Norfolk for each month from 1982 to 1984 and after adjusting for taxes, found that Baltimore prices and dealer mark-ups were almost always lower than those in Norfolk. (170 out of 204 possible cases)

The implications of these findings are clear. The best available statistical evidence shows the following:

1) Consumer prices in divorcement cities are lower than those in the nation as a whole, and the East Coast.

2) In Baltimore, Maryland, the laboratory of divorcement, consumer prices have not risen; rather, they are among the lowest in the nation. The fierce battle between independent dealers, and their low attrition rate, (one-fourth quarter of the national average) provides consumers with a greater range

of available services from convenience stores and car washes to traditional service, as well as, some of the most competitive prices in the country. This is because this market, instead of being controlled by a few oil giants, has gained hundreds of small businessmen competitors, breathing new life into the spirit of free competition in the petroleum marketing industry. Oil company control has been replaced by the business incentive that can only be kindled by the spark of private enterprise.

SERVICE STATION DEALERS OF AMERICA
RETAIL PRICING ANALYSIS
March 1, 1985

Tax Adjusted Prices in 63 Cities - Lundberg Letter, July 1984
All numbers include 9¢ Federal Tax
*** Indicates Divorcement State**
East Coast Cities in Caps

REGULAR UNLEADED SELF-SERVE

NATIONWIDE

*WILMINGTON	DE	95.60
Los Angeles	CA	96.03
*WASHINGTON	DC	98.38
*BALTIMORE	MD	98.53
Indianapolis	IN	98.61
San Diego	CA	99.00
Stockton	CA	99.16
Bakersfield	CA	99.28
Las Vegas	NV	99.35
Sacramento	CA	99.54
Phoenix	AZ	99.66
TAMPA	FL	99.76
Milwaukee	WI	99.85
Louisville	KY	100.05
PORTLAND	ME	100.23
Houston	TX	100.29
MANCHESTER	NH	100.35
MIAMI	FL	100.57
Seattle	WA	100.67
Cincinnati	OH	100.86
Spokane	WA	101.00
NEWARK	NJ	101.05
BOSTON	MA	101.07
PROVIDENCE	RI	101.08
Denver	CO	101.20
Chicago	IL	101.25
CHARLESTON	SC	101.27
San Francisco	CA	101.40
Fresno	CA	101.49
Tulsa	OK	101.52
Little Rock	AR	101.55
Detroit	MI	101.55
CHARLOTTE	NC	101.81
Billings	MT	101.82
Tuscon	AZ	101.86
Omaha	NE	102.03
Dallas	TX	102.12
New Orleans	LA	102.16
Salt Lake City	UT	102.18
*NEW HAVEN	CT	102.20
ATLANTA	GA	102.24
NORFOLK	VA	102.39
Memphis	TN	102.71
JACKSONVILLE	FL	102.87
Kansas City	MO	102.95
St. Louis	MO	103.11
Reno	NV	103.16
Anchorage	AL	103.76
Minneapolis	MN	103.98
Cheyenne	WY	104.61
Birmingham	AL	104.81
Jackson	MI	104.95
Albuquerque	NM	105.22
PITTSBURGH	PA	105.31
ROCHESTER	NY	105.59
Fargo	ND	105.64
Boise	ID	105.85
BURLINGTON	VT	106.30
El Paso	TX	106.54
Des Moines	IA	107.42
Sioux Falls	SD	111.84
LONG ISLAND	NY	112.37
Honolulu	HI	116.67

National Average	102.35
National Median	101.81
Divorcement Average	98.68
Divorcement Median	98.53
Non Divorcement Avg	102.60
Non Divorcement Med	101.82

EAST COAST

*WILMINGTON	DE	95.60
*WASHINGTON	DC	98.38
*BALTIMORE	MD	98.53
TAMPA	FL	99.76
PORTLAND	ME	100.23
MANCHESTER	NH	100.35
MIAMI	FL	100.57
NEWARK	NJ	101.05
BOSTON	MA	101.07
PROVIDENCE	RI	101.08
CHARLESTON	SC	101.27
CHARLOTTE	NC	101.81
*NEW HAVEN	CT	102.20
ATLANTA	GA	102.24
NORFOLK	VA	102.39
JACKSONVILLE	FL	102.87
PITTSBURGH	PA	105.31
ROCHESTER	NY	105.59
BURLINGTON	VT	106.30
LONG ISLAND	NY	112.37

East Coast Average	101.95
East Coast Median	101.27
Divorcement Average	98.68
Divorcement Median	98.53
Non Divorcement Avg	102.77
Non Divorcement Med	101.27

ATTACHMENT 6

RETAIL GASOLINE DIVORCEMENT - FACTS AND MYTHS

In an effort to preserve competition and retain some local control over the retail gasoline marketplace, several states have passed divorcement legislation, which prohibits oil refiners from operating gasoline stations with salaried personnel, subject to their control.

Divorcement requires only that the operator of a gasoline station be an independent dealer, who as a local small businessman, will be free to offer services and prices to meet local consumer demand.

Divorcement does not require oil companies to sell off service station properties and does not adversely affect refinery or station employment. Nor does it adversely affect consumer prices. It does, however, substantially increase competition in the retail marketplace.

This is because it breaks the oil companies' chain of control over prices from the wellhead, where the crude is recovered, thro the refineries to the consumer's gas tank.

Competition is intensified in a divorcement state by having hundreds of small businessmen heavily competing in the marketplace. In contrast, in situations where company-operations control retail prices, this inevitably leads to price-fixing to guarantee margins of profit and eliminate competition. This is typified by the Phillips v. Crown case in Baltimore in 1979, where 10 oil companies were found guilty of a conspiracy to set ratail prices in their stations.

In their effort to maintain total control over the marketing of gasoline, oil companies have spread a number of myths about divorcement legislation. They consistently try to portray retail divorcement as anti-consumer and posture themselves as the consumer's best friend. Although committees of the U.S. Congress and state governments have found that divorcement does not adversely affect consumer prices, the oil companies have hired economists such as Philip Sorenson (Florida State University - American Petroleum Institute) and John Umbeck (Arco) to produce studies to prove that prices in Maryland, (the leading divorcement state) and dealer profit margins, are abnormally high because of divorcement.

To date, service station dealers have lacked the money and technical staff to effectively counteract these econometric "hot pieces"; however, it should be pointed out that state governments and the Congress, which do have such facilities, have reviewed these works and have not found them persuasive.

Nevertheless, a number of smoke screens have been set up which divert legislative attention from the real issue, preserving competition and local control over the retail gasoline marketplace. Let's look at some of this mythology.

Myth No. 1 - There is a high degree of competiton in gasoline retail marketing. (If it ain't broke, why fix it?)

What we have in the gasoline retail marketplace today, is a very peculiar form of competition. More and more, we see major integrated refiners moving into the direct operation of retail outlets. We also see an increase in the direct servicing of commercial and wholesale accounts. In effect, the suppliers are competing head-to-head with those they supply.

There is no other industry where one competitor directly controls all of the factors that are vital to the other competitor's success or failure. Yet, in the gasoline marketing business, the refiner controls the lease and the rental on the dealer's property, the amount of product the dealer or distributor gets, the price the marketer pays for his product, the terms and conditions of credit both wholesale and retail, and much more. These factors all are controlled, unilaterally by the refiner and can be manipulated in such a way that the term "competition" takes on a whole new meaning.

Here's a quick example of how arbitrary the oil company can be. At hearings in December, 1982 the U.S. House Small Business Committee heard complaints that ARCO had established a system of pricing zones so that different dealers in the same area were being charged different prices for the same load of gasoline. ARCO's vice presidnet for marketing, George Babikian, later explained that his company had 800 different pricing zones, that the location of those zones is a secret, and that the borders of the zones are changed frequently.

Myth No. 2 - Divorcement legislation would lessen competition by removing refiner-run, high-volume outlets.

There is nothing inherent in high-volume, gas-and-go outlets that requires they be company-run. The president of Amoco testified before the House Small Business Committee in 1981 and stated that his company has established a very successful network of dealer-run, super pumpers in the Midwest. Maryland, which has had a divorcement law on the books since 1974, has a number of high-volume, self-serve stations.

Actually, the true threat to competition comes from the shrinkage in the number of independent marketers and the constraints places on them by the major oil companies. How can anyone honestly say it is less competitive to have thousands of independent businessmen selling gasoline than it is to allow a handful of oil companies to gain control of the entire marketplace?

The econometric studies which attack divorcement are based on assumptions that refiner-ops are more "efficient" than dealer operated stations. This myth comes from a combination of federal controls and the oil companies themselves.

Company-operated, high-volume, self-serve outlets that have been built in recent years are the reasons for the efficiency claim. The facts are simply that due to Federal allocation regulations, and oil company desire to maintain control.

In its 1981 report required by the Petroleum Marketing Practices Act, the Department of Energy stated:

> "To the extent that the economics of gasoline marketing have changed from low-volume outlets to higher volume outlets, dealers are put in a precarious economic position. They do not have the opportunity to demonstrate they can effectively manage higher volume outlets.

The Sorenson study claims prices and margins rose significantly more in Maryland than in the U.S. as a whole in 1979 and 1980 following divorcement.

Barron and Umbeck claim that divorcement caused prices at the divorced stations and stations in competition with them to rise significantly immediately after divorcement, and claim to be able to attribute the rise solely to divorcement via regression analysis. They then go on and take a giant, unwarranted leap of faith by assuming the long term effects of divorcement will be the same as the short term effects and come up with a "shock figure" of the cost of divorcement in order to impress legislators.

The unspoken truth of the matter is that prices and margins immediately after divorcement in Maryland were forced up BY FEDERAL MANDATE, July 13, 1979; or, "Black Friday" is the date that the majority of stations to be divorced were changed to dealer operations, usually under the direction of the person who managed the station for the oil company.

The following week, the new DOE regulations went into effect which MANDATED a company-operated mark-up of 10.59 cents per gallon but imposed a permissible margin of 15.4¢ per gallon for dealer-operation.

As noted analyist Dan Lundberg report, MANDATORY PREDATORY PRICING was in effect. Although the Maryland divorcement law was passed in 1974, it did not take effect until 1979 due to oil company challenges that were rebuffed by the Supreme Court in Exxon Corporation v. Governor of Maryland in 1978 and divorcement was not fully implemented until the end of 1981.

> The refiner is limited in adding volume to an existing outlet because of the allocation regulations ....Under existing regulations, refiners could put a dealer in a new high-volume. However, if the refiner wants the flexibility in the future of closing such an outlet or shifting some of the outlet allocation to another location, it may be effectively foreclosed from this option by installing a dealer instead of a company employee". (DOE Title III Report at p. 232.)

Moreover, some oil companies have testified before Congress that dealer operated stations are indeed more efficient. (Testimony of Bill Bittles, Marketing V.P. for Shell on Senate Bill 326 before the Senate Judiciary Committee p.556).

Basic economic theory and common sense also support the idea that an independent dealer, whose livlihood depends on his efficiency, would be more efficient than a salaried employee. Again, divorcement requires only that gasoline outlets be run by independent businessmen. The only reason for opposing this legislation is not efficiency and consumer benefits, it is the natural desire of oil companies to have total control of gasoline marketing from wellhead to gas tank.

Myth No. 3 - Passage of Divorcement Would Increase Consumer Prices.

This red herring finds its support in studies done by oil company economists of prices and dealer margins immediately after divorcement.

Moreover, DOE's mis-allocations created a situation in Maryland where long lines at the gas pumps were common; whereas, in neighboring Virginia, there were no lines at all.

To say that dealer margins and prices rose after divorcement in Maryland is like saying "The sun came up, therefore, it is warmer and brighter outside." It is totally misleading to conclude divorcement adversly affects consumers based on the Maryland market in 1979 and 1980, which the oil company economists do.

Studies by the House Small Business Committee and the state of Pennsylvania reviewed this literature and concluded that divorcement did not adversely affect consumers.

Indeed, a look at the Maryland market after decontrol and after divorcement shows quite a different story.

Barron - Umbeck contends Maryland prices and dealer margins dramatically increased immediately after divorcement.

Federal regulations finally ended in January 1981, and divorcement was fully imnplemented in Maryland by December 1981. It is most interesting to look at Baltimore dealer profit margins immediately after divorcement and decontrol as reported by the independent Lundberg Letter for January 1982. The Umbeck study claims self-serve unleaded regular gasoline (about 50% of the Maryland and national sales) rose dramatically.

Lundberg tells us that Baltimore dealers margin for this gasoline was not the highest or even among the highest, instead, it was THE LOWEST MARK-UP IN THE NATION! Moreover, the mark-up on self-serve leaded regular gasoline was also THE LOWEST IN THE NATION! If the economists are right, this cannot be.

The importance of this fact becomes clear when it is realized that the dealer margin is the only aspect of consumer price affected by divorcement and the only element not subject to oil company control. Oil comapnies may claim the margin figure is low because of higher wholesale prices, but this is wrong, it measures only what the dealer adds to his wholesale price.

The long term effects of divorcement are shown by looking at dealer margins and consumer prices at the present time.

The Umbeck report claims the bulk of the divorcement price rise was due to unleaded self-serve gas and full-serve. The report also assumes a ratio of self-serve to full-serve of 3 to 2. The fact is that in Maryland and the nation, the ratio is over 4 to 1, or more than 80% self-service. Additionally, regular unleaded gas now accounts for 50% of the gasoline sold nationwide.

Lundberg reports that dealers in Baltimore in 1984 averaged a mark-up of 3.79¢ per gallon on unleaded regular self-serve gas, second lowest in the nation to Indianapolis' 3.72¢ per gallon. Since June, 1984, Baltimore margins have been the LOWEST in the nation, a finding directly contradictory to oil company findings.

In July, 1984, the Lundberg organization did a survey of retail gasoline prices in 63 cities. After adjusting for state and local taxes, three of the four lowest prices in the country were in the divorcement cities of Wilmington, DE; Washington, D.C; and Baltimore, MD. In general, West Coast prices tend to be lower than East Coast prices due to the presence of gasoline refined from Alaskan oil. Arco is the dominant marketer in these areas, and allegations have been raised that at least part of its advantage is due to loopholes in the Windfall Profits Tax it applied to its Alaskan North Slope Crude. These facts make the market performance of the East Coast divorcement cities even more amazing.

Senator **Metzenbaum**. I will withhold any questions until we have heard from all of the witnesses.

Mr. Stoker, we would be happy to hear from you, sir.

Mr. **Rasheed**. Mr. Stanton would be next.

Senator **Metzenbaum**. Mr. Tracy Stanton.

Mr. **Rasheed**. From Ohio.

Senator **Metzenbaum**. From Ohio, fine.

STATEMENT OF TRACY L. STANTON

Mr. **Stanton**. Mr. Chairman, my name is Tracy Stanton. I am an independent branded service station dealer currently operating my business under a lease supply contract with the Shell Oil Co. My home and business are located in Columbus, OH.

Senator **Metzenbaum**. Mr. Stanton, we want you to take 5 minutes, but we also do not want you to speak so rapidly that nobody can understand you.

Mr. **Stanton**. All right, sir.

I am currently serving as president of the Service Station Dealers of America, our national trade association. Today, I speak to you representing some 60,000 service station dealers from 41 of our States and the Republic of Puerto Rico.

Our concern is that the neighborhood service station is being systematically eliminated from the marketplace and being replaced by oil company-operated, high-volume, gasoline-only type outlets, more obviously substantiated today than it has ever been in the past.

As an example, I offer the Texaco market in the greater Tacoma, WA, area, where in 1984 there were approximately 35 independent Texaco dealer stations. As a result of a planned elimination, the number of Texaco dealer stations in greater Tacoma was reduced to three in approximately a 90-day period. The rest were either out of business or working for Texaco.

In my own State of Ohio, the number one marketer in our Nation, Exxon, and the number three marketer, Texaco, no longer have any service stations. They both claimed that they could not maintain an adequate market share to be profitable. All this occurred in the State that ranks number five in the nation in gasoline consumption. To me, this scenario creates a serious question of credibility.

In my own hometown, Columbus, OH, Shell has offered to buy out several of their higher-volume dealers. To date, no one has accepted this buy-out offer. The first of these dealers to experience a lease renewal has seen his station rent go from $3,400 monthly to $7,000 monthly—more than double, with no facility or marketing improvements. This action follows true to form in the oil company process to eliminate a dealer and take over a desired location.

Respected oil industry analyst Dan Lundberg reported in August 1985 that 43 percent of our Nation's total gasoline outlets are gasoline pumpers that offer no traditional automotive services. In the midwestern United States, this figure is 56 percent; in the Rocky Mountain region, it is 60 percent.

All refiners readily admit that market share is the single factor that dictates whether they remain in a geographic area. Is it possible that the biggest mergers and corporate buy-outs in history are part of a long-range plan to divide up the market to ensure that each participant has his fair share and does not have to compete with a counterpart in the industry?

Will this strategy effectively force enough of the independent branded dealers out of business and allow refiners who operate retail gasoline outlets to control everything from the wellhead to the consumer's gas tank?

The fact that something is seriously wrong with the relationship between refiner oil companies and their lessee dealers is obvious. Notably, Connecticut, California, Delaware, Florida, Maryland, Minnesota, Virginia, and Washington, DC, currently have laws on the books that limit or prohibit refiner oil company operation of retail gasoline outlets with company personnel. At least 16 other States are considering or have similar legislation pending.

Washington State came within one vote of enacting retail divorcement of refiner oil companies in 1984. The dealers there will try again this year.

All 41 of the Service Station Dealer of America's affiliates have some form of State law that is designed to assist the independent branded service station dealer in his effort to remain viable in today's controlled marketplace.

I will conclude my testimony there, Mr. Chairman, in the essence of time, and I thank you for this opportunity to present our views to the committee.

[Prepared statement follows:]

STATEMENT
FOR THE
SERVICE STATION DEALERS OF AMERICA

PRESENTED BY
TRACY L. STANTON
INDEPENDENT BRANDED SERVICE STATION DEALER
(SHELL OIL COMPANY)
PRESIDENT: SERVICE STATION DEALERS OF AMERICA

MY NAME IS TRACY STANTON. I AM AN INDEPENDENT BRANDED SERVICE STATION DEALER CURRENTLY OPERATING MY BUSINESS UNDER A LEASE/SUPPLY CONTRACT WITH THE SHELL OIL COMPANY. MY HOME AND BUSINESS ARE LOCATED IN COLUMBUS, OHIO.

I AM CURRENTLY SERVING AS PRESIDENT OF THE SERVICE STATION DEALERS OF AMERICA, OUR NATIONAL TRADE ASSOCIATION. TODAY I SPEAK TO YOU REPRESENTING SOME SIXTY THOUSAND (60,000) SERVICE STATION DEALERS FROM FORTY ONE STATES AND THE REPUBLIC OF PUERTO RICO.

OUR CONCERN THAT THE NEIGHBORHOOD SERVICE STATION IS BEING SYSTEMATICALLY ELIMINATED FROM THE MARKETPLACE AND BEING REPLACED BY OIL COMPANY OPERATED HIGH VOLUME "GASOLINE ONLY" TYPE OUTLETS IS MORE OBVIOUSLY SUBSTANTIATED TODAY THAN IT HAS EVER BEEN.

AS AN EXAMPLE I OFFER THE TEXACO MARKET IN THE GREATER TACOMA WASHINGTON AREA, WHERE IN 1984 THERE WERE APPROXIMATELY THIRTY FIVE (35) TEXACO DEALER STATIONS. AS A RESULT OF A PLANNED ELIMINATION THE NUMBER OF TEXACO DEALER STATIONS IN GREATER TACOMA WAS REDUCED TO THREE (3) IN APPROXIMATELY A NINETY (90) DAY PERIOD! THE REST WERE EITHER OUT OF BUSINESS OR WORKING FOR TEXACO.

IN MY OWN STATE OF OHIO THE #1 MARKETER IN OUR NATION, EXXON, AND THE #3 MARKETER, TEXACO, NO LONGER HAVE ANY SERVICE STATIONS. THEY BOTH CLAIMED THAT THEY COULD NOT MAINTAIN AN ADEQUATE MARKET SHARE TO BE PROFITABLE. ALL THIS OCCURRED IN THE STATE THAT RANKS NUMBER FIVE (5) IN THE NATION IN TOTAL GASOLINE CONSUMPTION. TO ME THIS SCENARIO CREATES A SERIOUS QUESTION OF CREDITABILITY.

IN MY OWN HOME TOWN, COLUMBUS, OHIO, SHELL HAS OFFERED TO BUY OUT SEVERAL OF THEIR HIGHER VOLUME DEALERS. TO DATE NO ONE HAS ACCEPTED THIS BUYOUT OFFER. THE FIRST OF THESE DEALERS TO EXPERIENCE A LEASE RENEWAL HAS SEEN HIS STATION RENT GO FROM $3,400.00 MONTHLY TO $7,000.00 MONTHLY. MORE THAN DOUBLE WITH NO FACILITY OR MARKETING IMPROVEMENTS. THIS ACTION FOLLOWS TRUE TO FORM IN THE OIL COMPANY PROCESS TO ELIMINATE A DEALER AND TAKE OVER A DESIRED LOCATION.

I ASK EACH OF YOU TO CONSIDER YOUR HOME TOWN. YOU DO NOT NEED FIGURES OR STATISTICS, JUST LOOK AROUND THE NEXT TIME YOU ARE HOME. WHERE IS YOUR SERVICE STATION, WHAT IS ON THAT CORNER NOW? HOW MANY PLACES THAT SELL GASOLINE NOW OFFER GROCERIES, BEER AND WINE OR POSSIBLY A CAR WASH INSTEAD OF SERVICE, AND HOW MANY OF THESE NEW HIGH VOLUME PUMPERS ARE OPERATED BY REFINER OIL COMPANY PERSONNEL?

WHAT HAS HAPPENED TO THE LOCAL BUSINESSMAN WHO USED TO SERVICE YOUR CAR REGULARLY, OR START IT FOR YOU AT 7AM ON AN EXCEPTIONALLY COLD MORNING, OR COME WHEN YOU CALL TO REPAIR A FLAT TIRE AT TEN O'CLOCK AT NIGHT. MOST OF US HAVE TRADITIONALLY OFFERED THIS SERVICE SEVEN DAYS A WEEK, THREE HUNDRED AND SIXTY FIVE DAYS A YEAR AND MANY OF US NEVER CLOSE, OFFERING SERVICE TWENTY FOUR HOURS A DAY. TODAY THERE ARE OVER NINETY SIX THOUSAND FEWER SERVICE STATIONS IN THE U.S. THAN THERE WERE IN 1973 PRIOR TO THE FIRST OIL EMBARGO. ADMITTEDLY SOME WERE IN EXCESS BUT WHERE DOES THE "SHAKEOUT" END?

RESPECTED OIL INDUSTRY ANALYST DAN LUNDBERG REPORTED IN AUGUST, 1985 THAT FORTY THREE PERCENT (43%) OF OUR NATIONS TOTAL GASOLINE OUTLETS ARE GASOLINE PUMPERS THAT OFFER NO TRADITIONAL AUTOMOTIVE SERVICES. THE MIDWESTERN UNITED STATES HAS MORE GASOLINE NO SERVICE OUTLETS THAN IT HAS OUTLETS OFFERING SERVICE. FIFTY SIX PERCENT (56%) OF THOSE OUTLETS OFFER GASOLINE ONLY. IN THE ROCKY MOUNTAIN REGION 60% OF ALL GASOLINE OUTLETS OFFER NO SERVICE.

AS LITTLE AS A YEAR AGO WHO WOULD HAVE THOUGHT THAT THE NAME OF "GULF" WOULD NO LONGER EXIST IN THE OIL INDUSTRY OR THAT ARCO WOULD CEASE ALL OPERATIONS EAST OF THE MISSISSIPPI RIVER. TODAY THOSE TWO ABSOLUTELY IMPOSSIBLE IDEAS ARE FACT AND NO ONE SEEMS CONCERNED OR EVEN ASKS WHY. THE SERVICE STATION DEALERS OF AMERICA ARE CONCERNED AND WE WANT TO KNOW WHY.

ALL REFINERS READILY ADMIT THAT MARKET SHARE IS THE SINGLE FACTOR THAT DICTATES WHETHER THEY REMAIN IN A GEOGRAPHIC AREA. IS IT POSSIBLE THAT THE BIGGEST MERGERS AND CORPORATE BUYOUTS IN HISTORY ARE PART OF A LONG RANGE PLAN TO DIVIDE UP THE MARKET TO INSURE THAT EACH PARTICIPANT HAS HIS FAIR SHARE AND DOES NOT HAVE TO COMPETE WITH A COUNTERPART IN THE INDUSTRY? WILL THIS STRATEGY EFFECTIVELY FORCE ENOUGH OF THE INDEPENDENT BRANDED DEALERS OUT OF BUSINESS AND ALLOW REFINERS WHO OPERATE RETAIL GASOLINE OUTLETS TO CONTROL EVERYTHING FROM THE WELL HEAD TO THE MOTORISTS GAS TANK?

THE FACT THAT SOMETHING IS SERIOUSLY WRONG WITH THE RELATIONSHIP BETWEEN REFINER OIL COMPANIES AND THEIR LESSEE DEALERS IS OBVIOUS. NOTEABLY CONNECTICUT, CALIFORNIA, DELAWARE, FLORIDA, MARYLAND, MINNESOTA, VIRGINIA AND WASHINGTON D.C. CURRENTLY HAVE LAWS ON THE BOOKS THAT LIMIT OR PROHIBIT REFINER OIL COMPANY OPERATION OF RETAIL GASOLINE OUTLETS WITH COMPANY PERSONNEL. AT LEAST SIXTEEN OTHER STATES ARE CONSIDERING OR HAVE SIMILAR LEGISLATION PENDING. WASHINGTON STATE CAME WITHIN ONE VOTE OF ENACTING RETAIL DIVORCEMENT OF REFINER OIL COMPANIES IN 1984 AND DEALERS THERE WILL TRY AGAIN THIS YEAR. ALL FORTY ONE OF THE SERVICE STATION DEALERS OF AMERICA'S AFFILIATES HAVE SOME FORM OF STATE LAW THAT IS DESIGNED TO ASSIST THE INDEPENDENT BRANDED SERVICE STATION DEALER IN HIS EFFORT TO REMAIN VIABLE IN TODAYS CONTROLLED MARKETPLACE.

WE AS SERVICE STATION DEALERS KNOW THAT WE ARE A VITAL PART OF OUR SOCIETY. WE OFFER A SERVICE OF CONVENIENCE AND SAFETY TO THE MOTORING PUBLIC THAT NO ONE ELSE CAN EVEN CONSIDER OFFERING. WE FEEL THAT THERE IS A PLACE IN THE MARKET FOR ALL TYPES OF GASOLINE OUTLETS WHETHER THEY HAVE SERVICE BAYS, GROCERIES, OR A CAR WASH, BUT ALL SHOULD BE OPERATED BY INDEPENDENT BUSINESS PEOPLE WHO WOULD HAVE TO COMPETE WITH ONE ANOTHER FOR THE MOTORISTS BUSINESS, AND NOT BY REFINER OIL COMPANIES WHO APPEAR TO BE WORKING TOWARD MINIMIZING COMPETITION AND CONTROLLING THE TOTAL MARKETPLACE.

Senator Metzenbaum. Thank you very much, Mr. Stanton. It is nice to have you with us this morning.

Mr. Stan Patrick, from Metairie, LA.

STATEMENT OF STAN PATRICK

Mr. Patrick. Thank you, Mr. Chairman. I have been connected to the oil industry for 36 years as an employee of Amoco in marketing management and as an independent jobber, and for 8 years as an Exxon dealer.

After the first year of association with Exxon, I was one of 16 dealers nationwide to be selected to the National Dealer Advisory Council of theirs. I was also awarded a plaque in sales leadership.

In 1979, at Exxon's request, and having a dislike for government intervention, if you will, in controlling business, I acted then, stupidly, as a witness and testified before the Louisiana House and Senate subcommittee against divorcement in the oil industry.

However, Exxon's action, as well as the other majors' since that time and after the threat of divorcement was removed, and the surge of company-operated stations since the lifting of controls in 1981, made me realize that I was certainly used in that testimonial.

In the essence of time, I have submitted a copy to you of my case history, as well as a letter from Exxon when I was excommunicated from one of their stations.

The oil companies say that if a bill of this type is passed, the ones that will suffer will be the consumers. This, of course, is false, for if the wholesale prices charged dealers were competitive, dealers, in turn, would be more competitive with their customers.

At present, the consumer retail prices at company outlets, as you mentioned before, are less than the wholesale prices charged to dealers. The facts are the oil companies are not interested in consumer pricing at all. Their pricing policies and actions, such as excessive rents, have forced dealers to increase their retail prices or go out of business.

I was economically forced out of my station earlier this year and the company took over the location. Exxon had doubled my rent from $2,200 a month in 1978 to $4,400 a month this year. With a new 3-year lease which they submitted to me which would be effective, ~~the rent~~ would be up to $5,500 a month.

On the day I left—and this goes with what you said—Exxon immediately dropped the price that afternoon on regular gasoline at self-service to 1 cent below what I paid for it as a wholesale cost.

Today, no service station dealer can survive if his company wants to get rid of him. I am referring to such practices as excessive rent increases, infiltration of company-operated self-serve outlets, and using their retail company operations to undercut the wholesale prices charged to the dealers.

One dealer in New Orleans had his company build a new company-operated outlet a quarter of a mile away, selling gasoline at near his cost. He was told that if he did not like it, they would buy him out at market value for his products and equipment, plus an extra cash bonus for getting out. Their reason was that they wanted his station for a company-operation and they informed him that their goal was to have as many company operations as possible.

Through tactics of this kind, the current status—I have displayed a map here for you for your perusal showing by color scheme the infiltration of company operations in the New Orleans metropolitan market. Red is for Amoco, yellow for Shell, green for Texaco, blue for Gulf, and black for Exxon.

Texaco has 21 dealers and 29 company operations; that is 73 percent of the locations and an estimated volume of 70 percent of the market, productwise. Gulf has 23 dealers; they have 38 company operations, with an estimated volume of 70 percent of the total throughout.

Exxon has 30 dealers and 30 company operations, for a 50-50 split, but an estimated volume of 65 percent of the market. Shell has 58 dealers and 15 company operations—26 percent, locationwise, and approximately at the present 30 percent of the estimated volume.

I have brought along with me, which I would like to submit with this map to you for evidence, if you will, a booklet which shows the tank wagon wholesale prices of all of the major oil companies. Next to it, I have photographs at a given time of company-operated locations and their posted prices, which is in line with what you were saying.[1]

Senator METZENBAUM. We will accept it, and I will ask the staff to put it in such form that it can be included in the record.

Mr. PATRICK. The total is 111 company outlets and approximately 65 percent of the volume in the New Orleans metropolitan market of company operations.

Senator METZENBAUM. That is against how many independents?

Mr. PATRICK. There are 111 company operations. This is an infiltration since 1979. At that time, Shell had none; they have gone into it whole-hog. Exxon had about 7 in the marketplace; they have 30 now, and so on and so on. Each one of the companies has infiltrated to increase this.

The reason the jobber market is so high is the fact that Exxon, for example, did away with eight locations—exited them out because they do not want them if they are doing less than 40,000 gallons a month in the last 4 months' time.

What happened? The jobbers picked that business up. That is the reason the jobber volme is going up, for the salvation of the poor little rascal that hasn't got any place else to go for volume.

Senator METZENBAUM. Did you ever take this issue up with the Federal Trade Commission?

Mr. PATRICK. No, I did not in my own case.

[Prepared statement and letter follow:]

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[1] Material submitted is retained in committee files.

TESTIMONY OF

STAN PATRICK

I have been connected to the oil industry for 36 years as an employee of Amoco in Marketing Management, as an independent jobber, and for eight years as an Exxon dealer.

After the first year of association with Exxon, I was one of sixteen dealers nationwide to be selected to the National Dealer Advisory Council. I was awarded a plaque as a sales leader in 1978.

In 1979 at Exxon's request and having a dislike for government intervention in controlling business, I acted as a witness and testified before the Louisiana House and Senate Subcommittees against Divorcement in the oil industry.

However, Exxon's actions after the threat of divorcement was removed, and the surge of company operated stations since the lifting of controls in 1981, made me realize that I was used by the company.

The oil companies say that if a bill of this type is passed, the ones that will suffer will be the consumers. This is false, for if the wholesale prices charged dealers were competitive, dealers in turn would be more competitive with their customers. At present, the consumer retail prices at company outlets are often less than the wholesale prices charged to dealers. The facts are the oil companies are not interested in consumer prices. Their pricing policies and actions, such as excessive rents, have forced dealers to increase their retail prices.

I was "economically" forced out of my station earlier this year and the company took over the location. Exxon had doubled my rent from $2,200 per month in 1978 to $4,400 this year with $5,500 required in 1987. On the day I left, Exxon immediately dropped the price on regular gasoline at self-service to one cent below my cost.

Today no service station dealer can survive if his company wants to get rid of him. I am referring to such practices as excessive rent increases, infiltration of company operated, self-service outlets, and using their retail company operations to undercut the wholesale prices charged to dealers.

One dealer in New Orleans had his company build a new company operated outlet a quarter of a mile away, selling gasoline at near his cost. He was told that if he didn't like it they would buy him out at market value for his products and equipment, plus an extra cash bonus for getting out. Their reason was that they wanted his station for a company operation. They also informed him that their goal was to have as many company stations as possible. Through tactics of this kind, the current status of the major, oil-company-operations in the New Orleans market is:

1. Texaco
   - 21 Dealers
   - 29 Companies 73%
   - (est. Volume) 70%
2. Gulf
   - 23 Dealers
   - 38 Companies 68%
   - (est. Volume) 70%
3. Exxon
   - 30 Dealers
   - 30 Companies 50%
   - (est. Volume) 65%
4. Shell
   - 58 Dealers
   - 15 Companies 26%
   - (est. Volume) 30%

This totals 111 company outlets and approximately 65% of the volume.

An example of this disproportionate balance in New orleans is a Gulf dealer who runs an excellent operation on Chef Menteur Highway. His average monthly volume is 45,000 gallons. Nearby are two company operated Gulf locations on the same artery, one doing 200,000 gallons per month and the other 300,000 gallons per month. Both company outlets are self-serve. Both stations are selling gasoline around the dealer's wholesale cost.

As an example of the pricing methods used, Texaco's recent wholesale costs were 1.088 for regular unleaded, 1.118 for unleaded, and 1.178 for premium unleaded. At several company outlets, their posted prices which we have pictures of were for 1.049 on regular, (four cents below dealer cost); 1.139 for unleaded, (a two cent margin); and 1.249 for premium, (a seven cent margin).

It is also interesting to note, that several majors are purchasing products through exchange agreements, rather than their own products. Example, Gulf products from Murphy Oil Company, Texaco from Tenneco, etc.

The President recently stated that small business was extremely important to America and it was the largest single employer in the United States. In New Orleans, the 111 company operations equate to 330 jobs versus 1,110 if those locations were full-service, dealer-operations. In spite of all this, company operations are increasing. We need your help to stem their discriminatory practices before it's too late.

PATRICK'S CANAL BLVD. EXXON

EXXON Happy Motoring!

5101 Canal Blvd.
NEW ORLEANS, LOUISIANA 70124
Phone: 486-2866

January 24, 1985

Exxon Company, U.S.A.
Post Office Box 29506
New Orleans, LA 70189-0506

Dear Sir:

It is with a great deal of alarm, sorrow, and just being darn mad, that I am forced to write this epistle.

The main purpose of this letter is to notify you, in writing, by personal delivery, per the terms of my lease dated November 1, 1982, that I can no longer sustain the economic pain Exxon has imposed upon me as an individual and/or lessee dealer.

I have been connected with the oil industry since birth; my father, having started with Standard Oil Company of Indiana in 1922. After completing my educational and military responsibilities in 1949, I have worked for, and independently with, three major oil companies. In otherwords, for thirty-six years I have been directly connected to the industry.

In 1977, I leased the above premises from your company as an independent businessman. To me, the capital outlay was a large dollar investment, namely $40,000. My intent was to show a profit, naturally, but to strive hard to obtain same.

My motto in life has been to work hard to sustain the needs of my family and myself with pride and dignity, as well as improving, hopefully, the sales and well-being of those I represent.

After the first year of association with Exxon, I was one of sixteen dealers nationwide to be selected to the National Dealer Advisory Council. I was awarded a plaque as a sales leader in 1978.

In 1979 per your request, knowing my feelings of a dislike for government intervention in controlling business, I acted as a witness, on your behalf, and testified before the Louisiana House and Senate Subcommittees, that they refrain from imposing Divorcement Proceedings against the oil industry. I did this even though I was, and still am, a member and believer in the Retail Dealers' Association. In fact, I am on the Board of Directors for the New Orleans Chapter of same.

Since 1978, many things seem to have gone astray from the former handshake agreement between company and dealer. To this end, and primarily as it pertains to the writer, I list the following:

1. In October of 1977, I leased the subject location which was then selling an average of 65,000 gallons of gasoline per month.

2. Within one year after pursuing a hard line of selling, advertising, excellent service, twenty-four hour operation, etc., I averaged 90,000 plus per month.

3. In March, 1979, due to the so-called gas crisis, allocation set in and by May, 1979, until the summer of 1980, I was on allocation most of which was 80% of my purchases for the year and by month of 1978, the base year.

4. In 1978, but primarily 1979, 1980, and 1981, prices escallated rapidly. This, coupled with allocation and the government's request for conservation of fuel and purchases of smaller more economical cars, quickly eroded my volume.

5. Exxon, gloating over the demise of Divorcement Proceedings, and the 1981 lifting of gasoline controls at this point, seemed to turn on their past lifeblood, the dealer organization and presumably devised a plan for the future.

6. This plan was observed by the writer and other dealers to follow a hard line of economic hardships for dealers as follows:

    a. Sell gasoline in heavy quantities with primary sales through company-operated stations at self-service, priced at or below dealer wholesale cost. (This push on sales was in spite of the so-called government's way for conservation of product.)

    b. Also, hit the dealer in the pocketbook hard by restructuring your lease so that you were thought of only as a landlord and dealers as tenants. To this end, my monthly rent has more than doubled as it was averaging $2,200 per month in 1977 through 1978 and is currently $4,418 per month, payable in cash as the old method of cents per gallon. In addition I understand, per your outline, that my new lease, effective if desired on November 1, 1985, will be for three years with a $450 per month increase the first year. Then on each anniversary date within the three years, a probable $300 per month will be added. This would bring my rent up to $5,468 per month by November 1, 1987.

c. I further understand that all stations you expect to keep as Exxon representation and which you said mine is one will be demolished and rebuilt to a new image, possibly as a convenient store with numerous self-serve islands and possibly bays.

d. The outlay of capital, as mentioned in Item c, for myself and many other dealers, is naturally prohibitive.

e. Your utmost thoughts in recent years seems to have been centered on dealer pricing. Key competition is to be surveyed and yet our key competition is Exxon's company stations, coupled with necessitated higher prices due to rent gouging.

From a moral standpoint, I feel you have been extremely unfair with your methods in dealer relations. But for the hand of God, I would have been bankrupt and gone long ago which seems to be your goal. To this end, I cannot imagine anyone in your organization being a Sunday, or whatever, church goer and then fornicating your fellow man the balance of time. If so, perhaps the day will come to rectify same.

In summary, let me say that I know this has been extremely long, as it was intended. In fact, it could have been much longer.

I would appreciate your immediate response in the handling of my request, either by purchase or that of a new dealer.

I am not in a position to sustain much more economic hardships and I would presume, that if nothing else, you too would desire such a change.

My investment costs, sweat, and lifeblood are as important to me as is your billion-dollar structure.

A quick purchase agreement is desired.

I look forward to your reply in person or by return mail.

Sincerely,

Stanley A. Patrick Jr.

Stanley A. Patrick, Jr.

SAP:np

cc: Mr. Dan Lundberg
The Honorable Charles E. Bruneau
House of Representatives
United States Department of Energy
Bayou State Service Station Dealers' Assoc.
The Honorable Robert Livingston
The Honorable Corrine "Lindy" Boggs

Senator **Metzenbaum**. Mr. Rasheed, I might say to you that I heard Mr. Rule say that if they knew cases of predatory pricing, they would act. I do not think you ought to waste 1 minute. He ought to be back from the White House pretty soon. I think you ought to go over there and tell him about some of these cases and give him the opportunity to put up or shut up.

Mr. **Rasheed**. Mr. Metzenbaum, if I may respond, we have a case over at the FTC; we have spent 2 years accumulating evidence where oil companies are selling motor oil through discount houses.

The discount house will sell Gulf, for example, at 20 cents a quart and our dealers are paying 96 cents a quart at wholesale. Now, we have a file that thick that has been over at the Federal Trade Commission for 2 years. We are still waiting to hear whether or not they will act upon it.

Senator **Metzenbaum**. Well, I know, but he did not know about all these predatory pricing cases, and I think you ought to go over and see him yet today while these people are in town.

I think this is very interesting testimony that Mr. Patrick gives. He himself was a party to it; he was a witness, he was involved, and he is out of business. I think it is an interesting story.

I think you ought to give them that opportunity. I think you would be denying your Government services that they are entitled to.

Mr. **Rasheed**. Thank you for the suggestion, Mr. Metzenbaum.

Senator **Metzenbaum**. I may now get jumped on by the Justice Department for pushing, as Senator Grassley was, I read in the paper, for urging his Government to do that which it is supposed to do.

Mr. Stoker.

STATEMENT OF JAMES STOKER

Mr. **Stoker**. Mr. Chairman and members of the Committee, I appreciate the opportunity to testify today in support of a national divorcement bill. My name is Jim Stoker and I am the dealer president of the 1,100-member Greater Washington/Maryland Service Station Association. I am also the owner of an Exxon station on Liberty Road in Baltimore where I have worked for 9 years as an independent dealer.

In 1974, Maryland enacted legislation which prohibited the operation of gasoline service stations with employees of gasoline refiners. That law was upheld by the Supreme Court in June 1978 and refiners were ordered to divorce themselves from directly operating the stations by July 1979.

In Maryland, divorcement is working not only for the small business operator, but especially for Maryland consumers. We contend that divorcement has produced lower gasoline prices to the Maryland consumer.

Divorcement has built stability in the marketplace, while benefiting the State with increasing revenues and aiding consumers with lower prices. The State average profit margin is down for self-service unleaded to 3.77 cents per gallon. The profit margin nationally for that product is 6.78 cents per gallon.

Although the number of stations statewide has dropped, the total gallonage pumped in the State is up. Total motor fuel sales in the State has increased from 1980 to 1984. Fewer stations are pumping more gallons at lower profit and the lowest prices possible to the consumer. Divorcement is clearly beneficial to all parties concerned.

Senator METZENBAUM. Give us the details. The Government witnesses say that Maryland has caused the consumer to pay more. How do your prices compare with prices in Virginia and District of Columbia?

Mr. STOKER. Virginia and District of Columbia are pretty close to Maryland in terms of price per gallon. It is the States that do not have divorcement that are higher.

Total motor fuel sales in the State have increased from 1980 to 1984; fewer stations pumping more gallons at lower prices, as I said, to the benefit of all parties. The State has maintained its rank in gasoline sales at 21st in the Nation, and has increased the total gallonage pumped.

When the State fuel tax increased 2.5 cents a gallon in 1983, gasoline sales still increased and total revenue from motor fuel taxes increased even more. The overall stability of the service station industry in Maryland also indicates that divorcement works.

According to the State comptroller's office, the number of retail service stations has remained nearly constant over the last 3 years. The drop in stations from 2,273 in 1981 to 2,134 in 1984 reflects only a minor decrease of 2 percent. This compares favorably to the national average of approximately 5 percent, as reported by the National Petroleum News Fact Book for 1984.

In Maryland, divorcement works. In Maryland, we operate with total divorcement law. We are concerned that the legislative proposal before you would allow a 175,000-barrel-a-day exemption. Earlier this year, we successfully opposed a similar proposal in Maryland. We opposed it because that definition would have allowed 122 refiners into the State.

Why should these companies be accorded special treatment? Would that be fair for dealers and majors who are operating in States that have complete divorcement who have worked to provide service to the consumer at comparatively favorable rates?

The Small Business Administration has defined a small refiner for Federal procurement and loan programs as one with a daily capacity of 50,000 barrels a day. Certainly, you should not consider a definition in excess of that SBA definition.

Speaking as a dealer who operates in a State where service station divorcement works, I urge this committee to pass a comprehensive and total divorcement measure. Gasoline prices are lower in Maryland than other States that do not have divorcement. Dealers and refiners responded to Maryland's divorcement statute and are providing quality and service at comparatively low prices.

Thank you, Mr. Chairman.

[Prepared statement follows:]

TESTIMONY PRESENTED

BY

JIM STOKER
PRESIDENT

GREATER WASHINGTON/MARYLAND SERVICE STATION ASSOCIATION

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I APPRECIATE THIS OPPORTUNITY TO TESTIFY TODAY IN STRONG SUPPORT OF A NATIONAL DIVORCEMENT BILL. MY NAME IS JIM STOKER AND I AM THE DEALER PRESIDENT OF THE 1100 MEMBER GREATER WASHINGTON/MARYLAND SERVICE STATION ASSOCIATION. I AM ALSO THE OWNER OF THE VILLA NOVA EXXON STATION ON LIBERTY ROAD IN BALTIMORE, WHERE I HAVE WORKED FOR 9 YEARS AS AN INDEPENDENT SMALL BUSINESSMAN.

IN 1974 MARYLAND ENACTED LEGISLATION WHICH PROHIBITED OPERATION OF GASOLINE SERVICE STATIONS WITH EMPLOYEES OF GASOLINE REFINERS. THAT LAW WAS UPHELD BY THE SUPREME COURT IN JUNE OF 1978 AND REFINERS WERE ORDERED TO DIVORCE THEMSELVES OF DIRECTLY OPERATED STATIONS BY JULY 1979.

IN MARYLAND, DIVORCEMENT IS WORKING NOT ONLY FOR THE SMALL BUSINESS OPERATOR, BUT ESPECIALLY FOR THE MARYLAND CONSUMER.

WE CONTEND THAT DIVORCEMENT HAS PRODUCED LOWER GASOLINE PRICES TO THE MARYLAND CONSUMER. CHART 1 LOOKS AT THE AFFECT OF DIVORCEMENT ON THE MARGIN OR PROFIT OF THE SERVICE STATION DEALER, AND COMPARES IT TO NEARBY EAST COAST CITIES TO DETERMINE THE REAL EFFECT ON THE MARYLAND CONSUMER.

IN JANUARY OF 1980 WE WERE ONLY HALF WAY INTO DIVORCEMENT IMPLEMENTATION. BY AUGUST 1981 ONLY 2 EXEMPTIONS EXISTED DUE TO MINOR LEGAL CHALLENGES. THIS CHART COMPARES EAST COAST CITIES TO BALTIMORE AND APPARENT DEALER MARGINS (THE FIGURES WERE SUPPLIED BY THE LUNDBERG SURVEY AND NATIONAL PETROLEUM NEWS).

IN THIS CHART, AND IN CHART 2, WE LOOK AT SELF SERVE (WHICH REPRESENTS 75% OF ALL SALES) UNLEADED (THE LEADING SELLING PRODUCT, AT 45.5%) TO SHOW THAT THE MOTOR FUEL IS BEING SOLD TO THE CONSUMER AT LOWER RATES AND THAT MARYLAND SERVICE STATION DEALERS ARE MAKING FAR LESS PROFIT PER GALLON THAN THEIR COMPETITION IN NEARBY CITIES. THE PROFIT MARGIN FOR MARYLAND DEALERS FOR LEADED GASOLINE WAS ONLY 1.18 CENTS PER GALLON.

DIVORCEMENT HAS BUILT STABILITY IN THE MARKETPLACE, WHILE BENEFITING THE STATE WITH INCREASING REVENUES AND AIDING CONSUMERS WITH LOWER PRICES.

THE STATE AVERAGE PROFIT MARGIN IS DOWN FOR SELF SERVE UNLEADED TO 3.77 CENTS PER GALLON. THE PROFIT MARGIN NATIONALLY FOR THAT PRODUCT IS 6.78 PER GALLON. ALTHOUGH THE NUMBER OF STATIONS STATEWIDE HAS DROPPED, THE TOTAL GALLONAGE PUMPED IN THE STATE IS UP. TOTAL MOTOR FUEL SALES IN THE STATE HAS INCREASED FROM 1980 TO 1984. FEWER STATIONS ARE PUMPING MORE GALLONS AT LOWER PROFIT AND AT THE LOWEST PRICES POSSIBLE TO THE CONSUMER. DIVORCEMENT IS CLEARLY BENEFICIAL TO ALL PARTIES CONCERNED.

THE STATE HAS MAINTAINED ITS RANK IN GASOLINE SALES AT 21ST IN THE NATION AND HAS INCREASED THE TOTAL GALLONAGE PUMPED. WHEN THE STATE FUEL TAX INCREASED BY 2.5 CENTS A GALLON IN 1983, GASOLINE SALES STILL INCREASED AND TOTAL STATE REVENUE FROM MOTOR FUEL TAXES INCREASED EVEN MORE.

THE OVERALL STABILITY OF THE SERVICE STATION INDUSTRY ALSO INDICATES THAT DIVORCEMENT WORKS. ACCORDING TO THE STATE COMPTROLLER'S OFFICE, THE NUMBER OF RETAIL SERVICE STATIONS HAS REMAINED NEARLY CONSTANT OVER THE LAST THREE YEARS. THE DROP IN STATIONS FROM 2,273 IN 1981 TO 2,134 IN 1984 REFLECTS ONLY A MINOR DECREASE OF 2%. THIS COMPARES FAVORABLY TO THE NATIONAL AVERAGE OF APPROXIMATELY 5% AS REPORTED BY THE NATIONAL PETROLEUM NEWS FACT BOOK FOR 1984.

IN MARYLAND DIVORCEMENT WORKS. IN MARYLAND WE OPERATE WITH A TOTAL DIVORCEMENT LAW. WE ARE CONCERNED THAT THE LEGISLATIVE PROPOSAL BEFORE YOU WOULD ALLOW A 175,000 A BARREL A DAY CAPACITY EXEMPTION. EARLIER THIS YEAR WE SUCCESSFULLY OPPOSED A SIMILAR PROPOSAL IN MARYLAND, WE OPPOSED IT BECAUSE THAT DEFINITION COULD HAVE ALLOWED 122 REFINERS INTO THE STATE. TABLE 3 LISTS SOME OF THE POTENTIAL REFINERS.

WE HAVE LISTED U.S.A. PETROLEUM CORP., A VERY SMALL REFINER, TO ILLUSTRATE A POINT. IN 1982 THEY OPERATED 600 STATIONS. KERR-MCGEE HAS 1,785 STATIONS, TOTAL PETROLEUM HAS 1,863 STATIONS, DIAMOND SHAMROCK HAS 1,993 STATIONS, AMERICAN PETROFINA COMPANY HAS 4,037 STATIONS, AND THE LIST GOES ON.

WHY SHOULD THESE COMPANIES BE AFFORDED SPECIAL TREATMENT? WOULD THAT BE FAIR FOR DEALERS AND MAJORS WHO ARE OPERATING IN STATES THAT HAVE COMPLETE DIVORCEMENT WHO HAVE WORKED TO PROVIDE SERVICE TO THE CONSUMER AT COMPARATIVELY VERY FAVORABLE RATES?

THE SMALL BUSINESS ADMINISTRATION HAS DEFINED A "SMALL REFINER" FOR FEDERAL PROCUREMENT AND LOAN PROGRAMS AS ONE WITH A DAILY CAPACITY OF 50,000 BARRELS. CERTAINLY YOU SHOULD NOT CONSIDER A DEFINITION IN EXCESS OF THE S.B.A. DEFINITION.

SPEAKING AS A DEALER WHO OPERATES IN A STATE WHERE SERVICE STATION DIVORCEMENT WORKS, I URGE THIS COMMITTEE TO PASS A COMPREHENSIVE AND TOTAL DIVORCEMENT MEASURE. GASOLINE PRICES ARE LOWER IN MARYLAND THAN OTHER STATES THAT DO NOT HAVE DIVORCEMENT. DEALERS AND REFINERS RESPONDED TO MARYLAND'S DIVORCEMENT STATUTE AND ARE PROVIDING QUALITY AND SERVICE AT COMPARITIVELY LOW PRICES.

Senator METZENBAUM. Thank you, Mr. Stoker.

Let me just go across the board and ask you this question. Have you seen examples of company-operated stations charging the customer less than the price that dealers in your area have to pay at wholesale? Do you know of such cases?

Mr. STANTON. Are you asking me, Senator Metzenbaum?

Senator METZENBAUM. Pardon?

Mr. STANTON. Are you talking to me?

Senator METZENBAUM. Yes.

Mr. STANTON. Not less in my specific area. Generally, they retail at maybe two-tenths or three-tenths of 1 cent per gallon above what the dealer has to pay at wholesale.

Senator METZENBAUM. Point two or point three cents a gallon above the price that the dealer has to pay at wholesale?

Mr. STANTON. Yes, sir, that is correct.

Senator METZENBAUM. And from your experience in this industry, no matter how low they keep their operating costs, would you say that it was possible for them to operate at a profit with that kind of margin?

Mr. STANTON. I cannot answer that question, Mr. Metzenbaum, because I do not know how much an oil company makes in this "inter-company transfer."

Senator METZENBAUM. I am just talking about that two-tenths or three-tenths of 1 cent.

Mr. STANTON. No, sir, they cannot operate at that; no way possible.

Senator METZENBAUM. It is bound to cost them more than that to operate.

Mr. STANTON. That is correct. It costs more than that to pay the light bill.

Senator METZENBAUM. Whether they have salaried employees or whether they own the stations or not?

Mr. STANTON. They cannot operate at that kind of a margin, no, sir.

Senator METZENBAUM. Mr. Rasheed, do you want to respond to that question?

Mr. **Rasheed**. Well, I think there is one thing that we are forgetting, and that is that artificially high dealer tank wagon price. We are assuming that they cannot make a profit when they sell—and we have instances, we have testimony, we have dealers' affidavits.

That book that you have will show you cases where company operations are selling 4 cents a gallon below the price the dealer pays for the product before he pays anything else. He has got to pay for his credit cards, his rent, and everything else.

But the thing that lurks in the background is the fact that there is an artificially high dealer tank wagon price. In Canada, that price right now is estimated to be 27 cents a gallon above what it should be.

Now, when you have an inflated wholesale price and you come along and retail at, say, 3 or 4 cents below that price, you are assuming you are not making money, but in this case I think that assumption is wrong.

Senator **Metzenbaum**. I am not assuming they are not making money. I am questioning whether they can make money on the two-tenths or three-tenths of 1 cent. I understand that they still may have a fair amount of profit prior to that figure. I am trying to compare it with the price charged to retailer dealers.

Mr. **Rasheed**. Well, obviously, no one can operate at a two-tenths of 1 cent margin.

Senator **Metzenbaum**. What would you say is the normal cost to a dealer, whether company-owned, salaried employees or otherwise, in order to pay the costs of overhead? Even if you own it, you have got the value of the money on the land, the interest, the taxes, salaries, credit cards, et cetera.

What would you say a dealer normally needs in order to just cover expenses, whether it is independent or company-owned?

Mr. **Rasheed**. Well, it does depend to some extent on the type of operation.

Senator **Metzenbaum**. Surely.

Mr. **Rasheed**. But generally speaking, a dealer has to make a margin of 7 or 8 cents to cover costs, and I do not think that anyone can really operate for less.

Senator **Metzenbaum**. Mr. Stoker?

Mr. **Stoker**. I was just going to comment that there is a cents-per-gallon payroll factor in every station.

Senator **Metzenbaum**. There is what?

Mr. **Stoker**. A cents-per-gallon payroll that typically exceeds 3 cents right there. When you add rent and other factors of your overhead to that, the 8 cents that Mr. Rasheed is referring to becomes very realistic.

Senator **Metzenbaum**. Mr. Patrick, you obviously are prepared to answer that question because you have submitted a number of cases, as I understand it, which specifically zero in on that issue.

Mr. **Patrick**. I did indicate, which you have there on page 4 of my testimony, a prime example with Texaco where, for example, $1.08 per gallon is the wholesale cost and they are selling it on the street through their company operations at $1.04. You know, they will give you the baloney about the pool margin that you take a loss on the regular and you get a little bit better on the unleaded regular, and then you might have a little bit more on the premium. So you pool-margin it.

In their case, most of theirs are contractor-type locations anyway where they control that price, and so there is nothing to work back off of the back room work and the accessory products that they are selling in comparison to the normal dealer.

Senator **Metzenbaum**. Mr. Rasheed, earlier this year 13 major oil companies settled an antitrust case with thousands of dealers. The settlement required a payment of $25 million, as well as a requirement that the oil companies give the dealers more freedom to buy from other suppliers. That settlement, as I understand it, lasts only 5 years.

Before the *Bogosian* settlement, which was the name of that matter, what was the policy that brand name refiners followed in requiring their dealers to buy gasoline from them?

Mr. **Rasheed**. Well, the policies are not uniform, but generally speaking, oil companies have today, and in the past, minimum gallonage built into leases which require them to buy a certain amount of product.

There was a great deal of pressure on any dealer, for example, during the shortage who tried to buy product from another source and sell it as non-branded product. That did not go over very well with the major oil companies.

There has been a very strong effort from day 1 to have a dealer sell exclusively his supplier's brand of product.

Senator **Metzenbaum**. If this bill does not pass, what do you see down the road will be the structure of the gasoline retailing business?

Mr. **Rasheed**. Well, I think the trend is very obvious. The stories we heard about using company-ops for training stations—that testimony must have been written 20 years ago. That is not the testimony of today. Today, we have Texaco with over 1,000 S-2000 operations; these are the new super stations. They have a car wash, they have C stores. Of course, they have self-serve gas, and so on.

But this is obviously the form of operation that Texaco is going to follow—1,000 of these operations. Each one is equivalent in volume, gallonage-wise, to at least four, maybe five, six, traditional stations.

Mobil has a lease provision today which a dealer must sign if he wants his lease renewed. It says that the dealer will agree to have his location demolished. He may have a six-bay location with four mechanics and three tow trucks, but Mobil says, you will sign this rider which says we can come in and demolish your station and turn it into a pumper whenever we want.

Now, that is a provision; that is a requirement of his lease. So I think it is very obvious which way the industry is going. It is going to be a gas-only industry, if the companies have their way. It is going to have not just company operations on a spot basis, which was their policy at one point.

There is an obvious onslaught on dealers, as I said, and I do not think this is limited to any particular location. This is going to spread. Wherever they find an opportunity to run a large-volume operation, knowing they have an advantage that they can sell below cost, that they can draw that volume from existing dealers of other brands, I think that they have decided this is the way they want to sell their product.

Senator **Metzenbaum**. Thank you very much, gentlemen. We appreciate your testimony.

Mr. **Rasheed**. Thank you, Mr. Metzenbaum.

Senator **Metzenbaum**. At this point I will put a statement by Senator DeConcini in the record, as well as a statement from a dealer located in Arizona.

[The following were received for the record:]

Prepared Statement of Senator Dennis DeConcini

Mr. Chairman, I am pleased to join as a cosponsor and strong supporter of this bill making amendments to the Petroleum Marketing Practices Act. The original Act, enacted 6 years ago, was designed to enhance fair and open competition in the oil marketing industry by preventing unreasonable termination of marketers' franchise agreements with their suppliers. Experience has shown that more legislative action is needed if the original goals are to be met.

Independent distributors and retailers of motor fuel occupy a key position in the competitive structure of the petroleum industry. There are approximately 135,000 retail service station ~~dealers~~ in the United States; they supply the Nation with 75 percent of its motor fuel needs. However, over the past several years, their numbers have declined drastically. It is the opinion of many observers of this industry that predatory marketing practices by large refiners has been a vital factor in this decline.

Experience in several States such as Maryland, Delaware, and Washington, DC show that competition at the retail level is intensified by preserving independent competition. It is no coincidence that recent studies have shown these three entities also have lowest prices on self-service unleaded regular on the East coast and are among the lowest in the country.

This bill is not protectionist; it is pro-consumer. It does not set up a new regulatory bureaucracy for enforcement. Its purpose is to guarantee healthy and vigorous competition among retailers, distributors and refiners in the petroleum industry. This bill has been the subject of several days of hearing before the Judiciary Committee in previous Congresses and I hope that its processing can be expedited this year. We have as complete a record as we'll ever get; the time to act is now.

TREJO OIL COMPANY, INC.

Post Office Box G - Casa Grande, Arizona 85222
Telephone (602) 836-5352

85 OCT -4 PM 12 16

October 1, 1985

Senator Strom Thurmond
218 Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Thurmond:

I am writing to you to voice my concern and objection to Senate bill S-1140 involving retail divorcement and open supply within the retail gasoline industry. I write to you representing a family owned retail gasoline business which was started by my father in 1955. We currently market in the Southern half of Arizona. During the last five years we experienced our former supplier of some thirty years pulling out of the state which necessitated our having to find a new supplier. We have also gone, from a company which did business through lessee dealers to a company which owns and operates its own retail outlet. We made all these moves to stay competitive and provide our customers with goods and services which they wanted. We have grown and made some money because we were willing to change as the market conditions changed.

It is my opinion that this bill is unnecessary. Those in our industry are already protected from the potential problems it addresses by the PMPA Law and existing antitrust laws. Open supply provisions would increase the number of tanks in the ground, something of great concern to other government agencies right now, and would at the very least present a very confusing situation to the retail customer, as they try to determine what it is they are buying at a multi-brand location.

I urge you not to pass Senate bill S-1140. I request that this letter be made a part of the public record.

Thank you for your consideration of this matter!

Jon C. Trejo

Senator **Metzenbaum**. Our next panel is Mr. G. Norman Nicholson, Marathon Petroleum Co.; James D. Kowal, of ARCO; and Marion Smith, of Chevron.

Mr. Nicholson, we would be glad to hear from you, sir. As you know, we have a 5-minute rule.

Mr. **Smith**. I will go first, Mr. Chairman.

Senator **Metzenbaum**. We are delighted to have you go. I guess I would always recognize somebody from my own State first just out of a matter of good taste.

Mr. **Smith**. All right.

Senator **Metzenbaum**. You go ahead, Mr. Smith.

Mr. **Smith**. Thank you.

Senator **Metzenbaum**. We are happy to have you here, sir.

STATEMENT OF A PANEL CONSISTING OF: MARION M. SMITH, VICE PRESIDENT, MARKETING, CHEVRON, U.S.A., SAN FRANCISCO, CA; G. NORMAN NICHOLSON, VICE PRESIDENT, MARKETING, MARATHON PETROLEUM CO., FINDLAY, OH; AND JAMES D. KOWAL, VICE PRESIDENT, WHOLESALE MARKETING, ATLANTIC RICHFIELD CO., LOS ANGELES, CA

Mr. **Smith**. My name is Marion Smith. I am marketing vice president for Chevron, U.S.A.

Different companies have different ways of looking at marketing. My remarks will reflect the views of Chevron.

S. 1140 deals with two major subjects—open supply and divorcement. Chevron is strongly opposed to both provisions of the bill. The open-supply provisions would permit confiscation of Chevron facilities and destruction of Chevron's valuable brand name. Divorcement provisions would prevent 15 to 20 of the country's largest refiners from operating their own retail service stations.

For the record, I am totally opposed to divorcement, but in the interests of the committee's time and to avoid redundancy, I am going to concentrate my remarks on open supply. Chevron's branded station system that has been developed is now threatened by a provision, however well intended, that says a Chevron dealer must buy only 70 percent of his gasoline under the Chevron brand, but has the right to continue to represent himself as a Chevron dealer.

Many open supply bills have been introduced in various legislatures around the country. To our knowledge, they have all been defeated, primarily because branded lessee dealers, not sharing the view of the association, speak out against open supply.

It is important that you know why these branded dealers oppose open supply. These dealers are business people, whether they own their own facilities or they lease them from a company like Chevron. And they understand perhaps better than many of us the values inherent in branded marketing to them and to their customers. The dealers recognize the threat that open supply poses.

Looking at it from the consumer's standpoint, consumers today have many choices as to where they buy gasoline. They have dozens of brands to choose from, and those electing to buy at a Chevron station do so because they like the product, they see its value, and they protect their car investment with the assurance of quality fuel, backed by Chevron's willingness to stand behind its Chevron gasoline.

Once the brand disappears, the consumer would lose these benefits and other benefits customarily associated with the brand.

Chevron dealers have had the contractual right since 1949 to make their own investment in storage and dispensing facilities for the sale of non-Chevron gasoline. In doing so, they have to make their own investment, have to assume all the responsibilities for the facilities and products that Chevron normally assumes, and the dealers have not chosen in many instances to exercise this right, probably because to do so requires investment, risk and accountability, in addition to the majority view that they would not want to undermine the value of the brand.

Senator METZENBAUM. Is it economically advantageous for him or her to do that?

Mr. SMITH. Well, I think that when they put the pencil to it, they find that it probably is not.

Senator METZENBAUM. Is not?

Mr. SMITH. Yes.

Senator METZENBAUM. That just means, apparently, that you sell it to that dealer at a different price if he has his own facilities as compared to the price if he buys it from the tank car. Is that not what you are saying?

Mr. SMITH. We have a value attached to the brand, Mr. Metzenbaum. That is the only thing different between the two scenarios.

Senator METZENBAUM. You have a value attached to the brand?

Mr. SMITH. Yes.

Senator METZENBAUM. I do not understand that.

Mr. SMITH. We cannot provide a brand and support it with advertising and all the support services that go with maintaining a brand nationally, maintaining product control, quality control, the equipment to maintain it, monitoring the brand in terms of environmental controls, octane postings, lead content. We cannot maintain a brand without there being a cost attached to it.

Senator METZENBAUM. Do you ever sell your gasoline at a company-operated station at less than the price that you sell it to dealers?

Mr. SMITH. Absolutely not.

Senator METZENBAUM. And how much variation is there? Is there a standard?

Mr. SMITH. In Chevron's case?

Senator METZENBAUM. Yes.

Mr. SMITH. In extreme competitive situations that have been faced by us in certain markets, we put floors on the price that we will take our company-op stations down to, but there has never been a time when we have taken them below the dealer's buying price.

Senator METZENBAUM. How close?

Mr. SMITH. No closer than 2 cents on regular leaded—we have a policy on this—and it is from 2 to 4 cents on unleaded, and often higher than that on premium unleaded.

Senator METZENBAUM. I would assume that the company has all of this spelled out in its own manuals or its own procedures.

Mr. SMITH. It is not spelled out in manuals. It is a marketing policy that I have instituted in our company and we have followed it very closely.

Senator METZENBAUM. Is it in written form so that everybody knows what the policy is?

Mr. SMITH. I have not tried to broadcast that policy. You have asked me some things here that I probably should not have even commented on in this open hearing, if I want to be very technical, but I am trying to be as honest as I can with you. I am divulging pricing information.

Senator METZENBAUM. I just want you to be honest with me.

Mr. SMITH. Well, I am divulging pricing information in front of competitors; that is pretty damned sensitive stuff, and I probably should have elected to say, you know, it is sensitive and I should not have answered you. But I have answered you, so it is on the record.

Senator METZENBAUM. Well, I appreciate that and I appreciate your candor. Go ahead, Mr. Smith. I took some of your time.

Mr. SMITH. Thank you. I think I had just reviewed the fact that Chevron dealers have had a contractual right to do their own thing and take on the responsibility for doing it, and I just want to make that clear.

This bill, however, would permit the dealer to take one of Chevron's tanks and convert it solely to someone else's gasoline. What it says to the consumer when he comes to a Chevron station is he may no longer find the Chevron product he has regularly used in his automobile.

Additionally, with this 70 percent requirement, a dealer could choose to convert all of his gasoline facilities for 10 days of the month to the sale of someone else's gasoline. During that time, not a drop of Chevron gasoline would be available at a Chevron station.

The open supply provisions of the bill would create a whole series of insurmountable problems—the serious problem of consumer deception; the likelihood of commingling; the potential loss of trademark rights, which we think are very valuable; the liability for the sale of defective gasoline.

Who is liable and responsible for gallonage rentals to landowners, and the problems resulting from using tanks at a station for different kinds of gasoline, for instance, potentially containing alcohol or methanol or some other additive or some other extender?

Let us take up the serious problem of consumer deception. The supplier's brand or hallmark is what brings many into the station. Under this bill, customers might not find any Chevron product available or might not get the product they drove in to buy. In other words, they would be the victims of a classic bait-and-switch scheme.

If the consumer has a problem, you can be sure the customer will demand satisfaction not only from the Chevron dealer, but also Chevron, whose flag flies at the location, regardless of whose gasoline the customer actually got.

What I have just described would be just the beginning. With non-Chevron products coming into storage and dispensing facilities normally intended for Chevron products, it would be virtually impossible to establish responsibility for assurances of trademark, product quality and warranty, and the highly sensitive environmental controls that go along with the responsibility of marketing gasoline.

This bill assumes products will not be illegally commingled. However, the provisions of the bill would bring about a set of circumstances under which product integrity could not be monitored effectively by Chevron or the various governmental agencies with responsibilities in this area.

Two areas of major concern for continuous monitoring are lead content and octane ratings. Again, the question is who is accountable on a continuing basis?

Liability for the sale of defective gasoline would become a monumental problem.

Senator **METZENBAUM**. Can you wind up?

Mr. **SMITH**. All right, sir.

Senator **METZENBAUM**. Just take another minute to wind up what you have to say.

Mr. **SMITH**. All right, sir.

Under the present system, Chevron lessee dealers are selling Chevron gasoline from Chevron facilities, and we stand firmly behind those products. With other products being sold from those facilities and commingling taking place, obviously there would be less accountability.

I am trying to dust right on over here.

Some additional problems, real quickly, can be anticipated. Many kinds of gasoline will be used in a storage tank the dealer uses for non-Chevron gasoline. I have indicated some of the other problems that go along with liability and accountability.

I guess I will wind up with just saying two or three things, Senator. The problems I have discussed will not just cause the erosion of branded marketing, but eliminate the brand entirely. This is because no one can afford to support a brand for someone else's sales.

The proponents of S. 1140 have brought you a bill that has two provisions. They are as transparent as they can be. Their proposal to you is Chevron continues with land and facility investment, maintains the Chevron brand and services, carries all the product and facilities responsibility, leases the property to Chevron dealers for as long as the dealer wants, but there is a catch.

Any economic justification Chevron has for continuing these activities should be discounted 30 percent because Chevron dealers would be free to convert Chevron's tanks and pumps to other suppliers 30 percent of the time.

I have more in my prepared statement, but I will close there.

[Prepared statement follows:]

TESTIMONY OF

MARION M. SMITH

VICE PRESIDENT - MARKETING

CHEVRON U.S.A.

MY NAME IS MARION SMITH. I AM MARKETING VICE PRESIDENT FOR CHEVRON U.S.A. DIFFERENT COMPANIES HAVE DIFFERENT WAYS OF LOOKING AT MARKETING. MY REMARKS REFLECT THE VIEWS OF CHEVRON.

S. 1140 DEALS WITH TWO MAJOR SUBJECTS -- OPEN SUPPLY AND DIVORCEMENT. CHEVRON IS STRONGLY OPPOSED TO BOTH PROVISIONS OF THE BILL. THE OPEN SUPPLY PROVISIONS WOULD PERMIT CONFISCATION OF CHEVRON FACILITIES AND DESTRUCTION OF CHEVRON'S VALUABLE BRAND NAME. THE DIVORCEMENT PROVISIONS WOULD PREVENT 15 TO 20 OF THE COUNTRY'S LARGEST REFINERS FROM OPERATING THEIR OWN RETAIL SERVICE STATIONS.

FOR THE LAST TEN YEARS LEGISLATURES THROUGHOUT THE COUNTRY HAVE BEEN ASKED TO CONSIDER SPECIAL LEGISLATION PROPOSED BY VARIOUS DEALER ORGANIZATIONS, OFTEN WITHOUT THE SUPPORT OF THE DEALERS THEY SAY THEY REPRESENT. IN 1978, YOU PASSED THE PETROLEUM MARKETING PRACTICES ACT, A DEALER BILL OF RIGHTS. NOW YOU HAVE BEEN TOLD THAT IF YOU PASS THIS BILL, PROBLEMS DEALERS HAVE IN A COMPETITIVE MARKET WILL BE RESOLVED.

I AM CONVINCED THIS BILL, LIKE MOST ATTEMPTS TO REGULATE A FREE MARKET, WILL MAKE MATTERS WORSE -- NOT BETTER -- FOR THOSE VERY DEALERS THE PROPONENTS ARE ATTEMPTING TO PROTECT.

FOR THE RECORD, I AM TOTALLY OPPOSED TO DIVORCEMENT. BUT, IN THE INTEREST OF THE COMMITTEE'S TIME AND TO AVOID REDUNDANCY WITH STUDIES AND PAPERS YOU HAVE ALREADY READ, I AM GOING TO CONCENTRATE MY REMARKS ON OPEN SUPPLY.

IN CHEVRON'S VIEW, THE OPEN SUPPLY PROVISIONS REPRESENT A LEGISLATIVE ATTEMPT TO OBTAIN FOR DEALERS ALL THE BENEFITS OF BRANDED MARKETING WITHOUT THE COST OR RESPONSIBILITY OF PROVIDING A SUPPLIER'S BRANDED PRODUCTS TO THE CONSUMER. OVER THE PAST 75 YEARS IN THIS COUNTRY, BRANDED MARKETING THROUGH SERVICE STATIONS HAS DEVELOPED BECAUSE IT OFFERS:

- CONSUMER BENEFITS
- RETAILER BENEFITS
- AND REFINER BENEFITS

CHEVRON'S BRANDED STATIONS SYSTEM THAT HAS BEEN DEVELOPED IS NOW THREATENED BY A PROVISION, HOWEVER WELL INTENDED, THAT SAYS A CHEVRON DEALER MUST BUY ONLY 70% OF HIS GASOLINE UNDER THE CHEVRON BRAND, BUT HAS THE RIGHT TO CONTINUE TO REPRESENT HIMSELF AS A CHEVRON DEALER.

IN MANY STATES AND, INDEED, FEDERALLY, THERE HAS BEEN A GREAT DEAL OF CONTROVERSY ABOUT OPEN SUPPLY, PRIMARILY, IN MY JUDGMENT, BECAUSE OPEN SUPPLY IS NOT UNDERSTOOD. IN THE UNITED STATES TODAY THERE ARE HUNDREDS OF THOUSANDS OF RETAILERS OF GASOLINE.

- SOME SELL UNDER THEIR OWN BRAND NAME, AND MOST OFTEN OWN ALL OF THEIR OWN FACILITIES.

- OTHER RETAILERS SELL UNDER A MAJOR BRAND, SUCH AS CHEVRON, AND ALSO OWN THEIR OWN FACILITIES.

- STILL OTHERS LEASE THEIR PREMISES FROM REFINERS, SUCH AS CHEVRON, AND HAVE NO CAPITAL INVESTMENT IN THE LAND OR FACILITIES.

THE FIRST TWO CATEGORIES OF RETAILERS HAVE INVESTED THEIR CAPITAL IN THEIR LAND AND IN THEIR BUILDINGS AND CHOOSE TO MARKET EITHER UNDER THEIR OWN BRAND OR THE BRAND OF A MAJOR SUPPLIER.

THE THIRD CATEGORY OF DEALERS WHO LEASE THEIR STATIONS ALIGN THEMSELVES WITH A COMPANY, SUCH AS CHEVRON, BECAUSE THEY ELECT NOT TO INVEST IN SERVICE STATION LAND AND FACILITIES, AND THEY VIEW THE BRAND PACKAGE OFFERED BY THEIR SUPPLIER AS BEING SUFFICIENTLY COMPETITIVE TO ALLOW THEM TO BE VIABLE MARKETERS AT THEIR LOCATION AS A LESSEE DEALER.

IT IS CRITICAL THAT WE FOCUS ON THIS GROUP -- THE GROUP PURPORTEDLY REPRESENTED BY THE PROPONENTS OF THIS BILL. THE PROPONENTS ARE SAYING TO YOU THAT DEALERS WANT TO CONTINUE TO HAVE ALL THE BENEFITS THEY CURRENTLY ENJOY WITH THE BRAND BUT BE ALLOWED TO SELL SOMEONE ELSE'S GAS 30% OF THE TIME THROUGH THE SUPPLIER'S FACILITIES.

MANY OPEN SUPPLY BILLS HAVE BEEN INTRODUCED IN VARIOUS LEGISLATURES AROUND THE COUNTRY. TO OUR KNOWLEDGE THEY HAVE ALL BEEN DEFEATED, PRIMARILY BECAUSE BRANDED LESSEE DEALERS NOT SHARING THE VIEW OF THE ASSOCIATIONS SPEAK OUT AGAINST OPEN SUPPLY -- AND IT IS IMPORTANT THAT YOU KNOW WHY THESE BRANDED DEALERS OPPOSE OPEN SUPPLY.

THESE DEALERS ARE BUSINESSPERSONS -- WHETHER THEY OWN THEIR OWN FACILITIES OR THEY LEASE THEM FROM A COMPANY LIKE CHEVRON --AND THEY UNDERSTAND PERHAPS BETTER THAN MANY OF US THE VALUES INHERENT IN BRANDED MARKETING TO THEM AND THEIR CUSTOMERS. THESE DEALERS RECOGNIZE THE THREAT THAT OPEN SUPPLY POSES.

BRANDED CONTRACTS WITH CHEVRON GIVE CHEVRON DEALERS THE ASSURANCE OF QUALITY PRODUCTS, AND A STABLE SOURCE OF SUPPLY. IN ADDITION, CHEVRON DEALERS ENJOY THE BENEFITS OF A WELL-KNOWN CREDIT CARD, TRAINING PROGRAMS, EXTENSIVE ADVERTISING AND A HOST OF OTHER SERVICES NOT AVAILABLE TO THE UNBRANDED DEALER. THE VAST MAJORITY OF CHEVRON DEALERS DO NOT WANT TO

JEOPARDIZE THESE BENEFITS AND THAT'S WHY THEY OPPOSE OPEN SUPPLY.

NOW LET'S LOOK AT IT FROM THE CONSUMER'S STANDPOINT. CONSUMERS TODAY HAVE MANY CHOICES AS TO WHERE THEY BUY THEIR GASOLINE.

THEY HAVE DOZENS OF MAJOR BRANDS NATIONALLY FROM WHICH TO CHOOSE. THOSE SELECTING TO BUY AT A CHEVRON STATION DO SO BECAUSE THEY LIKE THE PRODUCT, THEY SEE ITS VALUE, AND THEY PROTECT THEIR CAR INVESTMENT WITH THE ASSURANCE OF QUALITY FUEL BACKED BY CHEVRON'S WILLINGNESS TO STAND BEHIND ITS CHEVRON GASOLINES.

ONCE THE BRAND DISAPPEARS, THE CONSUMER WOULD LOSE THESE BENEFITS, AND OTHER BENEFITS CUSTOMARILY ASSOCIATED WITH THE BRAND, SUCH AS THE SUPPLIER'S CREDIT CARD, PRODUCT WARRANTY, AND REGIONALLY CONSISTENT AUTOMOTIVE PROUCTS.

CHEVRON INVESTS IN SERVICE STATION BRAND MARKETING BECAUSE IT GIVES US A RELIABLE OUTLET FOR OUR PETROLEUM PRODUCTS AND SUPPORTS OUR SENSITIVE BALANCE OF REFINERY TOTAL PRODUCT PRODUCTION THAT GOES NOT ONLY TO AUTOS, BUT TO RAILROADS, AIRLINES, FARMERS, HOMEOWNERS, TRUCKERS, ETC. IF CHEVRON GASOLINE SALES TO ITS CHEVRON DEALERS ARE JEOPARDIZED, THERE IS NO REASON FOR CHEVRON TO CONTINUE ITS BRANDED MARKETING AND THAT WILL SERIOUSLY HURT CHEVRON DEALERS.

THE OPEN SUPPLY PROVISION YOU ARE CONSIDERING IS FAR DIFFERENT FROM ANY OTHER OPEN SUPPLY BILL I HAVE EVER SEEN, AND I THINK IT IS IMPORTANT THAT YOU UNDERSTAND WHY THIS BILL IS SO ONEROUS.

CHEVRON DEALERS HAVE HAD THE CONTRACTUAL RIGHT SINCE 1949 TO MAKE THEIR OWN INVESTMENT IN STORAGE AND DISPENSING FACILITIES FOR THE SALE OF NON-CHEVRON GASOLINES. IN DOING SO, THEY HAVE TO MAKE THEIR OWN INVESTMENT AND HAVE TO ASSUME ALL OF THE RESPONSIBILITIES FOR THE FACILITIES AND PRODUCTS THAT CHEVRON NORMALLY ASSUMES. DEALERS HAVE NOT EXERCISED THAT CONTRACT RIGHT -- NOT BECAUSE OF THE ARGUMENTS YOU HEAR FROM THE PROPONENTS, BUT BECAUSE OF THE FINANCIAL INVESTMENT, THE RISK, AND THE UNCERTAINTY OF CONSUMER RESPONSE.

THIS BILL, HOWEVER, WOULD PERMIT THE DEALER TO TAKE ONE OF THE SUPPLIER'S TANKS AND CONVERT IT SOLELY TO SOMEONE ELSE'S GASOLINE. WHAT IT SAYS TO THE CONSUMER IS: WHEN HE GOES TO A CHEVRON STATION, HE MAY NO LONGER FIND THE CHEVRON PRODUCT HE HAS REGULARLY USED IN HIS AUTOMOBILE. ADDITIONALLY, WITH THIS 70% REQUIREMENT, A DEALER COULD CHOOSE TO CONVERT ALL OF HIS GASOLINE FACILITIES FOR TEN DAYS OUT OF THE MONTH TO THE SALE OF SOMEONE ELSE'S GASOLINE. DURING THAT TIME, NOT A DROP OF CHEVRON GASOLINE WOULD BE AVAILABLE AT A CHEVRON STATION.

THE OPEN SUPPLY PROVISIONS OF THE BILL WOULD CREATE A WHOLE SERIES OF INSURMOUNTABLE PROBLEMS:

- THE SERIOUS RISK OF CONSUMER DECEPTIONS,
- THE LIKELIHOOD OF COMMINGLING,
- THE POTENTIAL LOSS OF TRADEMARK RIGHTS,
- LIABILITY FOR THE SALE OF DEFECTIVE GASOLINE,
- RESPONSIBILITY FOR GALLONAGE RENTALS TO LAND OWNERS, AND
- THE PROBLEMS RESULTING FROM USING TANKS AT THE STATION FOR DIFFERENT KINDS OF GASOLINE.

LET'S TAKE UP THE SERIOUS PROBLEM OF CONSUMER DECEPTION: A SUPPLIER'S BRAND OR HALLMARK IS WHAT BRINGS MANY INTO THE STATION. UNDER THIS BILL, CUSTOMERS MIGHT NOT FIND ANY CHEVRON PRODUCT AVAILABLE OR MIGHT NOT GET THE PRODUCT THEY DROVE IN TO BUY. IN OTHER WORDS, THEY WOULD BE THE VICTIMS OF A CLASSIC "BAIT-AND-SWITCH" SCHEME.

FACED WITH THIS SITUATION, SOME CONSUMERS MIGHT TAKE THEIR BUSINESS ELSEWHERE. OTHERS MIGHT DECIDE TO BUY THE NON-CHEVRON PRODUCT OFFERED AT THE STATION. HOWEVER, THERE WOULD BE NO GUARANTEE OF QUALITY AND NO SUPPLIER AVAILABLE TO STAND BEHIND THE PRODUCT.

IT SEEMS HIGHLY UNLIKELY THAT THE QUALITY OF THE NON-CHEVRON PRODUCT WOULD BE CONSISTENT. IT COULD BE "JOE'S GAS" ONE WEEK, "MIKE'S GAS" THE NEXT AND SOME OTHER PRODUCT THE WEEK FOLLOWING. ON SOME OCCASIONS, THE DEALER MIGHT USE THE TANK FOR CHEVRON'S BRANDED PRODUCT. IF THE CONSUMER HAS A PROBLEM, YOU CAN BE SURE THE CUSTOMER WILL DEMAND SATISFACTION NOT ONLY FROM THE CHEVRON DEALER BUT ALSO CHEVRON, WHOSE FLAG FLIES AT THE LOCATION, REGARDLESS WHOSE GASOLINE THE CUSTOMER ACTUALLY GOT.

WHAT I HAVE JUST DESCRIBED WOULD BE JUST THE BEGINNING. WITH NON-CHEVRON PRODUCT COMING INTO A CHEVRON STATION, IT WOULD BE VIRTUALLY IMPOSSIBLE TO ESTABLISH RESPONSIBILITY FOR ASSURANCES OF TRADEMARK, PRODUCT QUALITY AND WARRANTY, AND THE HIGHLY SENSITIVE ENVIRONMENTAL CONTROLS.

THIS BILL ASSUMES PRODUCTS WILL NOT BE ILLEGALLY COMMINGLED. HOWEVER, THE PROVISIONS OF THE BILL WOULD BRING ABOUT A SET OF CIRCUMSTANCES, UNDER WHICH PRODUCT INTEGRITY COULD NOT BE MONITORED EFFECTIVELY BY CHEVRON OR THE VARIOUS GOVERNMENTAL AGENCIES WITH RESPONSIBILITIES IN THIS AREA. TWO AREAS OF MAJOR CONCERN FOR CONTINUOUS MONITORING ARE LEAD CONTENT AND OCTANE RATINGS. AGAIN, THE QUESTION IS: WHO IS ACCOUNTABLE ON A CONTINUING BASIS?

FROM A SUPPLIER STANDPOINT, THERE ARE MANY PROBLEMS WITH OPEN SUPPLY. CHEVRON USES TRADEMARKS

THAT ARE RECOGNIZED AND PROTECTED UNDER FEDERAL AND STATE LAWS AND CHEVRON HAS AN AFFIRMATIVE DUTY TO PREVENT MISUSE OF THE MARK. IF THERE IS COMINGLING AT PUMPS WHERE CHEVRON PRODUCTS ARE SOLD, THE PUBLIC WOULD CLEARLY BE MISLED. IF NON-CHEVRON MOTOR FUELS ARE SOLD FROM CHEVRON'S DISPENSING FACILITY, WHICH IS NORMALLY USED FOR CHEVRON PRODUCT, THE MOTORING PUBLIC COULD ALSO BECOME VERY CONFUSED AND PERHAPS MISLED INTO BUYING AN NON-CHEVRON GASOLINE WITH THE INTENT TO PURCHASE A CHEVRON PRODUCT. AS A CONSEQUENCE, CHEVRON'S TRADEMARK RIGHTS COULD BE PUT IN JEOPARDY. WE DO NOT THINK THAT THE NOTICE REQUIREMENTS OF S. 1140 WOULD BE ENOUGH TO GUARANTEE THAT OUR TRADEMARKS WOULD NOT BE LOST. THE OPPORTUNITIES FOR CONSUMER DECEPTION WOULD STILL BE TOO GREAT.

UNFORTUNATELY, LIABILITY FOR THE SALE OF DEFECTIVE GASOLINE WOULD BECOME A MONUMENTAL PROBLEM.

UNDER THE PRESENT SYSTEM, CHEVRON LESSEE DEALERS ARE SELLING CHEVRON GASOLINE FROM CHEVRON FACILITIES AND WE STAND FIRMLY BEHIND OUR PRODUCTS. WITH OTHER PRODUCTS BEING SOLD FROM OUR FACILITIES AND COMMINGLING TAKING PLACE WITH INCREASING FREQUENCY, THERE COULD BE SUBSTANTIAL LIABILITY FOR DEFECTIVE GASOLINE. THE NON-CHEVRON GASOLINE MIGHT CONTAIN TOO MUCH ALCOHOL, TOO MUCH LEAD, OR BE CONTAMINATED. AS I MENTIONED EARLIER, IF THE CONSUMER HAS A PROBLEM, HE WILL BELIEVE CHEVRON WAS RESPONSIBLE. INDEED, IF THE TRANSACTION IS ONE FOR CASH, NO ONE COULD BE CERTAIN WHETHER CHEVRON GASOLINE

OR THE NON-CHEVRON GASOLINE WAS PURCHASED. IN ANY CASE OF DOUBT, YOU CAN BE SURE THAT IF CHEVRON'S SIGN IS ABOVE THE STATION, CHEVRON WILL BE CONSIDERED LIABLE.

CHEVRON DEALERS RECOGNIZE, WITH THIS OPEN SUPPLY HODGEPODGE UNDER A CHEVRON FLAG, ANY LOYALTY THEY HAVE BUILT UP WITH CONSUMERS WOULD BE UNDERMINED. DEALERS HAVE ALSO TOLD US THEY RECOGNIZE THAT TO EXPECT CHEVRON TO INVEST HUNDREDS OF THOUSANDS OF DOLLARS IN FACILITIES AT A SERVICE STATION AND BE TOLD THAT CHEVRON COULD ONLY EXPECT TO SELL 70% OF THE VOLUME IS ECONOMICALLY UNREALISTIC. DEALERS RECOGNIZE THE SIZEABLE INVESTMENT AND MAINTENANCE COSTS REQUIRED BY TODAY'S SERVICE STATIONS AND KNOW THEIR STATION'S ECONOMIC JUSTIFICATION AS A CHEVRON BRANDED STATION HINGES ON THE VOLUME OF CHEVRON GASOLINE GOING THROUGH THE LOCATION. CONSEQUENTLY, MOST CHEVRON DEALERS SEE THE THREAT TO THE BRAND NETWORK OPEN SUPPLY REPRESENTS.

THERE ARE SOME ADDITIONAL PROBLEMS TO BE CONSIDERED:

- IT CAN BE ANTICIPATED MANY DIFFERENT KINDS OF GASOLINE WILL BE USED IN THE STORAGE TANK THE DEALER USES FOR NON-CHEVRON GASOLINE. WHO WILL HAVE THE RESPONSIBILITY FOR MAINTAINING THIS TANK PROPERLY?

- IF CHEVRON GASOLINE IS USED FROM TIME TO TIME IN THIS TANK, WHO WILL HAVE THE RESPONSIBILITY

TO THE REGULATORY AGENCIES FOR GRADE AND OCTANE POSTINGS?

- WHO WILL BE RESPONSIBLE FOR ANY ENVIRONMENTAL PROBLEMS THAT STEM FROM NON-CHEVRON GASOLINE?

- WHO IS GOING TO PAY THE LAND OWNER WHOSE RENTAL IS BASED ON THE STATION'S GALLONAGE?

- WHAT SYSTEM CAN POSSIBLY BE DEVISED FOR ESTABLISHING THE PERCENTAGE OF NON-CHEVRON GASOLINE SOLD WITHOUT REQUIRING THE DEALER TO FURNISH HIS BOOKS TO CHEVRON ON A CONTINUING BASIS?

THE BILL DOES NOT EVEN MENTION ANY OF THESE PROBLEMS.

BECAUSE OF ALL THESE PROBLEMS, REFINERS WOULD BE FORCED TO RE-EXAMINE WHETHER THEIR EXTENSIVE INVESTMENTS IN BRAND-NAME MARKETING MADE ANY SENSE. I THINK MANY REFINERS WOULD CONCLUDE THAT BRANDED MARKETING IS JUST NOT WORTH IT.

I WOULD LIKE TO TAKE A MINUTE TO EXPLAIN CHEVRON'S RELATIONSHIP WITH ITS CHEVRON LESSEE DEALERS.

CHEVRON PROVIDES THE DEALER WITH A LOCATION ON A TURNKEY BASIS. THE BASIC INVESTMENT IS OURS. THE DEALER PAYS NO FRANCHISE FEE. A CHEVRON DEALER OBTAINS

PRODUCTS WHICH CHEVRON STANDS BEHIND. THE DEALER COMMITS TO MEETING THE DEMAND FOR ALL GRADES OF CHEVRON GASOLINES.

IF THE DEALER BECOMES DISSATISFIED WITH THE ARRANGEMENT, HE CAN WALK AWAY FROM IT AT ANY TIME FOR ANY REASON OR NO REASON. IT'S HIS CHOICE. ON THE OTHER HAND, UNDER THE PETROLEUM MARKETING PRACTICES ACT PROVISIONS, A DEALER IS VIRTUALLY ASSURED OF BEING AT A STATION LOCATION AS LONG AS CHEVRON IS THERE.

THE PROBLEMS I HAVE DISCUSSED WILL NOT JUST CAUSE THE EROSION OF BRANDED MARKETING BUT ELIMINATE THE BRAND ENTIRELY. THIS IS BECAUSE NO ONE CAN AFFORD TO SUPPORT A BRAND FOR SOMEONE ELSE'S SALES.

THE PROPONENTS OF S. 1140 HAVE BROUGHT YOU A BILL THAT HAS TWO PROVISIONS. THEY ARE AS TRANSPARENT AS THEY CAN BE. THEIR PROPOSAL TO YOU IS:

- CHEVRON CONTINUES WITH THE LAND AND FACILITIES INVESTMENT, MAINTAINS THE CHEVRON BRAND AND SERVICES, CARRIES ALL THE PRODUCT AND FACILITIES RESPONSIBILITY, AND

- LEASES THIS PROPERTY TO CHEVRON DEALERS FOR AS LONG AS THE DEALERS WANTS.

BUT THERE'S A CATCH. ANY ECONOMIC JUSTIFICATION CHEVRON HAS FOR CONTINUING THESE ACTIVITIES SHOULD BE

DISCOUNTED 30% BECAUSE CHEVRON DEALERS WOULD BE FREE TO CONVERT CHEVRON'S TANKS AND PUMPS TO OTHER SUPPLIERS' PRODUCTS 30% OF THE TIME.

THEN, FOR FEAR CHEVRON, IN AN EFFORT TO PROTECT ITS INVESTMENTS, MIGHT CONSIDER MARKETING THROUGH THESE FACILITIES ON A DIRECT BASIS, THIS BILL WOULD PROHIBIT CHEVRON FROM DOING SO.

SO, NOW, THIS SPECIAL INTEREST LEGISLATION WOULD RESULT IN CONFISCATING OUR INVESTMENTS AT DEALER LOCATIONS AND REQUIRE THAT WE CONVERT OUR COMPANY LOCATIONS TO DEALER OPERATION SO THEY, TOO, CAN BE CONFISCATED.

AND WHILE CHEVRON WOULD BE MEATAXED, AS I HAVE JUST DESCRIBED, JOBBERS, MASS MERCHANDISERS, PRIVATE BRAND RETAILERS ARE EXCLUDED.

GASOLINE IS SOLD IN A FREE MARKET AND WHATEVER RULES ARE ADOPTED SHOULD APPLY EQUALLY TO EVERYONE.

I TRUST YOU CAN SEE THE UNFAIRNESS OF THE BILL AND WHY I FIRMLY BELIEVE THAT THE RAMIFICATIONS OF THIS BILL'S PROVISIONS, AS THEY APPLY TO DEALERS, CONSUMERS AND REFINERS, ARE SIMPLY NOT UNDERSTOOD.

I URGE YOU TO REJECT IT.

Senator **Metzenbaum**. Mr. Smith, do you think that the dealers who have spoken about problems that they have with competition coming in at lower than they pay—selling at retail lower than they pay or selling at two-tenths or three-tenths of a cent more than they pay—do you think that that is a justifiable complaint on their part?

Mr. **Smith**. Senator, I cannot speak for other companies as far as their complaint, if that is true. Obviously, Chevron, by its own practices, does not do it.

Senator **Metzenbaum**. I appreciate that representation and I accept it. Chevron's main thrust and concern is that you would have this outside supply coming in that might play upon your trademark or might very well affect your reputation because even though the bill says it is unlawful for a dealer to dispense someone else's gasoline without identifying it totally, they might not do that.

I think members of this committee want to be fair about the issue. My question is do you see any way that you are prepared to work with us to write the language in such a way to protect your concern about that aspect of the legislation?

Mr. **Smith**. Senator, I will tell you, as I mentioned in my testimony—and I was reading awfully fast, but the provisions we have had with our dealers—as I said, since 1949 permit this to happen if it is done in a way that he takes the accountability, the responsibility, in segregated systems where there is no dilution of the integrity of the product from Chevron's point of view; there is the ability to control our quality.

And we do not replace Chevron's gasolines in order to put in somebody else's.

Senator **Metzenbaum**. Would you think that——

Senator **Specter**. Senator Metzenbaum, may I interrupt you?

Senator **Metzenbaum**. Sure.

Senator **Specter**. First, pardon the interruption.

Senator **Metzenbaum**. Well, we are happy to welcome you, Senator Specter.

STATEMENT OF SENATOR ARLEN SPECTER

Senator **Specter**. Well, I am glad to be here. I regret that I cannot stay long. We have a very unusual schedule in this body. We were in session last night until past 3 a.m.; we are working on the debt ceiling issue.

I do think that this is a very important hearing and I will be reviewing the transcripts concerning what position I will take. I do have some questions which I would like to have submitted for the record.

I again express my regret that I cannot stay, but I cannot because of other commitments.

Senator **Metzenbaum**. Senator Specter, would you want to indicate to whom those questions are addressed, since we have about 10 witnesses today?

Senator **Specter**. They are going to be addressed to all the witnesses, Senator Metzenbaum.

Senator **Metzenbaum**. All the witnesses?

Senator **Specter**. Yes.

[Questions and responses follows:]

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MARK H. GITENSTEIN, MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510

October 15, 1985

Mr. Marion M. Smith
Chevron U.S.A., Incorporated
575 Market Street
San Francisco, California 94105

Dear Mr. Smith:

As a follow-up to the Committee's hearing on October 9, 1985 concerning S. 1140, the Motor Fuel Sales Competition Improvement Act of 1985, I would appreciate your written responses to the enclosed questions on behalf of Senator Arlen Specter. Please return your answers to the Committee not later than the close of business on Wednesday, October 30, 1985. If you have any questions, please contact Ken Starling at (202) 224-8061.

With kindest regards and best wishes,

Sincerely,

Strom Thurmond

Strom Thurmond
Chairman

ST:jvx
Enclosure

SENATOR SPECTER

QUESTIONS--S. 1140, the Motor Fuels Competition Act

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1. How many stations are owned and operated by the 20 largest oil refiners? What percentage does this represent? What were the comparable figures in 1970, 1975, and 1980?

2. What is evidence that refiners engage in predatory pricing of gasoline re independent dealers? Isn't this already illegal under existing law?

3. What has been the effect of permitting dealers to purchase a certain percentage of their requirements on the "open market," where it has been required pursuant to settlement agreements? Is there any evidence of confusion among consumers as to the source of the product they are buying?

Chevron

Chevron U.S.A. Inc.
575 Market Street, San Francisco, CA 94105

Marion M. Smith
Vice-President
Marketing

October 24, 1985

The Honorable Strom Thurmond, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator:

In regard to your October 15 letter on behalf of Senator Arlen Specter, Chevron responds as follows:

1. Chevron is pleased to furnish Chevron's station numbers for the years 1970, 1975, 1980, and 1985.

	1970	1975	1980	1985
Co-Ops	642	341	100	140
Lessee Dealers	8,794	6,479	4,789	3,512
Owner Dealers	6,861	5,977	5,855	1,339
Jobber-Supplied Dealers	1,235	1,666	1,495	5,249

We have no access to station information for the 20 largest oil refiners. Sources we know that tabulate station count are the National Petroleum News, the Department of Energy, and the Lundberg Survey.

2. At the October 9th hearing on S. 1140, the Federal Trade Commission representative made mention of the Title III Study authorized by the Petroleum Marketing Practices Act. A principal finding of the Title III Study was that refiners have not engaged in predatory pricing. On behalf of Chevron, I testified at the recent hearing with respect to dealer claims of predatory pricing. As I commented, Chevron's policy has been never to establish pump prices at its direct-operated stations that are less than 2¢ above Chevron's dealer tankwagon price in that area.

3. Chevron has not entered into any settlement agreement permitting dealers to purchase a certain percentage of their requirements on the open market. For the record, Chevron has, by contract since 1949, extended the right to dealers to install pumps and tanks for the purpose of selling other suppliers' products. Chevron has never had a business practice nor are we aware of any laws or regulations, such as you are considering, that permit a dealer to use a supplier's tanks for someone else's product on a continuing basis. If you will please refer to my testimony on page 7:

The Honorable Strom Thurmond
United States Senate
October 24, 1985
Page 2

> "Chevron dealers have had the contractual right since 1949 to make their own investment in storage and dispensing facilities for the sale of non-Chevron gasolines. In doing so, they have to make their own investment and have to assume all of the responsibilities for the facilities and products that Chevron normally assumes. Dealers have not exercised that contract right — not because of the arguments you hear from the proponents — but because of the financial investment, the risk, and the uncertainty of consumer response.
>
> "This bill, however, would permit the dealer to take one of the supplier's tanks and convert it solely to someone else's gasoline. What it says to the consumer is: When he goes to a Chevron station, he may no longer find the Chevron product he has regularly used in his automobile. Additionally, with this 70% requirement, a dealer could choose to convert all of his gasoline facilities for ten days out of the month to the sale of someone else's gasoline. During that time, not a drop of Chevron gasoline would be available at a Chevron station (emphasis in original)."

This percentage provision of S. 1140 is onerous and presents potential problems of consumer deception, likelihood of commingling, trademark infringement, etc.

Senator Specter's last question concerns consumer deception. So far as we know, there has never been a legislative or regulatory scenario granting dealers the right to use a supplier's tanks and pumps on a percentage basis. Under S. 1140, a dealer could continue to use the Chevron Hallmark but sell another supplier's products exclusively for ten days out of a month and sell Chevron products the rest of the time. Alternatively, a dealer could take one Chevron tank and pump and dedicate these facilities to another supplier's product for the entire month.

We have had no experience where dealers have been given the continuing right to use Chevron's tanks for other suppliers' products and cannot comment about potential confusion among consumers, except to say that in periods of short supply in the Seventies, where occasional debranding occurred, there was considerable negative customer response.

Please let me know if Chevron can be of further help to the Committee.

Very truly yours,

M M Smith

M. M. Smith

Senator SPECTER. Before leaving, I would like to note the presence of a longstanding friend and colleague, the Honorable David Berger, who is on an expert panel later this morning. He is a very distinguished member of the Philadelphia bar—really, the world bar, having been city solicitor of Philadelphia.

He has a very outstanding record and reputation in this field of antitrust class actions and the securities field.

Senator METZENBAUM. We were wondering who that distinguished looking gentleman with the red tie was out there in the audience. We are glad that you identified him.

Senator SPECTER. Well, that is the least I can do and, this morning, about the most I can do. Thank you very much.

Senator METZENBAUM. We are happy to have him with us and we are sorry you cannot stay, Senator Specter.

Mr. BERGER. Thank you very much, Senator Specter.

Senator METZENBAUM. If the legislation provided similar language to that which you have in your agreement with the dealers, would Chevron no longer be opposed to it?

Mr. SMITH. Senator, they have that right now, so I never see any reason to have legislation that replaces what is already there, you know.

Senator METZENBAUM. But not all oil companies are as far-seeing as Chevron and some do not have that right.

Mr. SMITH. Our main interest is in protecting the integrity of our brand and the quality of our products and making sure that someone is liable and accountable for all the things that go with that type of marketing.

Senator METZENBAUM. As I understand it, you feel you get that by having this as a part of the contractual understanding. Therefore, I would guess that if there were legislation that provided the same kind of responsibilities or obligations on the part of the dealer, we would no longer have to look at Chevron as an opponent of this legislation.

Mr. SMITH. Of the open supply portion?

Senator METZENBAUM. Yes.

Mr. SMITH. If you take our existing policy on this matter and write it into law, I guess I could not object to that.

Senator METZENBAUM. Maybe we can get you onboard; we will try.

Mr. SMITH. I am still opposed to divorcement, but I will not belabor that point.

Senator METZENBAUM. Mr. Nicholson.

STATEMENT OF G. NORMAN NICHOLSON

Mr. NICHOLSON. Mr. Chairman, I am G.N. Nicholson, Vice President of Marketing, Marathon Petroleum Co. Our statement in opposition to S. 1140 has been filed for the record.

Marathon Petroleum Co. engages in the refining, marketing, and transportation of petroleum and petroleum products. In 1984, we sold slightly more than 4 billion gallons of gasoline. Approximately 60 percent of these sales were made to independent businessmen, including some 2,300 Marathon branded outlets in six Midwest

States—Indiana, Illinois, Kentucky, Ohio, Michigan, and Wisconsin.

These outlets are operated by independent marketers primarily as full-service stations, as well as independent marketers who resell our gasoline under their private brands. The remaining 40 percent of our gasoline was sold through company-owned outlets in direct retailing under secondary brand names, not as Marathon.

At the end of 1984, we operated approximately 1,300 of these secondary brand outlets, which are primarily self-service, gas-and-go units. Each of these secondary brand outlets would be put in jeopardy and directly affected by the divorcement provisions of S. 1140.

S. 1140 would compel divorcement of just about half of the 16,000 company-operated outlets which exist in the United States today. Because of the refiners affected and the concentration of more than 7,300 of their company-operated outlets in the same six Midwestern States of Indiana, Illinois, Kentucky, Ohio, Michigan, and Wisconsin, the impact of S. 1140's divorcement provisions is distinctly regional rather than national.

I think the committee should know that the legislatures in each of these six Midwest States have considered and rejected divorcement proposals similar to S. 1140 in the past 5 years.

The Committee is surely aware that S. 1140 does not prohibit all refiners from operating retail gasoline stations. Of more than 150 refiners in the United States, all but 15 are excluded from divorcement under the small refiner exemption.

These 15 refiners are included in divorcement based on a 1973 definition of crude oil security when the bulk of their refinery crude oil import was produced by themselves. This classification has no rational marketing basis; it has nothing to do with how the refiner operates and the kinds of outlets retailing gasoline.

It is undeniable that the gasoline marketplace has been changed drastically during the last decade. For example, 10 years ago only about 20 percent of the total gasoline sales were pumped through self-service units. Today, self-service accounts for over 70 percent of total sales.

Ten years ago, the gasoline sold at convenience stores was a negligible share of the market. Today the share of market claimed by convenience stores exceeds 15 percent and it is still growing.

Today, the market share of branded and unbranded jobbers exceeds 46 percent, versus 33 percent 10 years ago. Dealers' market share has fallen correspondingly.

Market forces beyond the control of domestic refiners prompted consumers to use less gasoline and to shop for outlets offering lower prices when they did buy. The emergence of self-service as a dominant method of retailing gasoline is nothing more nor less than a competitive market's response to a consumer-driven change in buying priorities.

As the gasoline market changed, so did Marathon's market strategy. We have no company-operated Marathon-branded stations. We do have more Marathon-branded outlets today than we did in 1981. We have added 500 new lessee dealers, excluding renewals, since the beginning of 1979. We are currently seeking dealers.

In the last 3 years, we have taken on as new Marathon-branded dealers 115 dealers of refiners and companies who withdrew from the Great Lakes gasoline market area.

If gasoline marketing divorcement should become Federal law, it will be no cure for the alleged ailment of dealers. It must be evident that the elimination of some refiner suppliers and some low-price marketers will not promote or enhance competition.

Divorcement blatantly aims to protect a special class of marketer at the expense of other competitors and of competition itself. This does not mean that competition will be destroyed by divorcement action, but it certainly does mean that it will be diminished.

Before closing, let me say something about the open supply provisions of S. 1140. This provision, which would permit a dealer to shop for the lowest priced gasoline and resell it at a branded station, would create havoc in the branded marketing system and would cause, or could cause, many refiners to abandon branded marketing altogether.

Though the dealer would theoretically be required to debrand the product, he would be dispensing it through our equipment at an outlet displaying our trademark. As a result, motorists could no longer be assured of motor fuel product quality. Both consumers and manufacturers—that is, refiners—would suffer the consequences.

The consumer and the public interest ultimately pay the cost of reduced competition. That cost will come in the form of higher gasoline prices and fewer gasoline outlets. For these reasons, I urge you to reject S. 1140.

Thank you, and I will be happy to answer your questions.

[Prepared statement and letter follow:]

Statement of
G. NORMAN NICHOLSON
Vice President, Marketing
Marathon Petroleum Company

I am G. N. Nicholson, Vice President, Marketing, Marathon Petroleum Company. I appreciate this opportunity to appear before the Committee and express Marathon's views in opposition to S. 1140. I ask that my entire statement be included as part of the record of this proceeding. I will summarize our views in the interest of time.

Marathon Petroleum Company engages in the refining, marketing and transportation of petroleum and petroleum products. It is a wholly-owned subsidiary of Marathon Oil Company. Marathon Oil's family of companies collectively make up a medium-sized integrated oil company which engages in virtually all functions of the oil business, including exploration and production, in the United States and abroad. Marathon Oil Company is owned by United States Steel Corporation.

Marathon Petroleum Company markets primarily in six Great Lakes states and in the southeastern region of the country. Over the years a very significant portion of Marathon's gasoline has been sold to independent marketers who resell the product under their own private brand names and to independent dealers, jobbers and distributors who resell the product under the Marathon trademark.

In 1984, we sold slightly more than 4.0 billion gallons of gasoline, and roughly 60 percent of our sales were made to those independent businessmen. That group includes approximately 2,300 Marathon branded outlets in Indiana, Illinois, Kentucky, Ohio, Michigan and Wisconsin which are operated by independent marketers primarily as full-service stations.

The remaining 40 percent of our gasoline in 1984 was sold through a wholly-owned subsidiary engaged in direct retailing under secondary brand names such as "Bonded," "Gastown," "Speedway," "Cheker," "ECOL," "Port" and "Value." At the end of 1984 the subsidiary operated approximately 1,300 of the secondary brand outlets which are primarily self-service "gas and go" units. It is this group of secondary brand outlets that would be directly affected by the divorcement provisions of S. 1140.

It is undeniable that the gasoline marketplace has been characterized by unprecedented turbulence during the last decade. The total service station population has dropped dramatically. The nature and composition of the outlets retailing gasoline today are vastly different from what they were ten years ago. While there may be some dispute about exact numbers, the trends are clearly evident. We know, for example, that ten years ago only about 20 percent of total gasoline sales was pumped through self-service units. Today self-service accounts for over 70 percent of total sales. Ten years ago the gasoline retailed by convenience stores represented a negligible share of the market. Today the share of market claimed by convenience stores is estimated to be 15 percent and it is still growing.

The most definitive data has been collected by the Department of Energy in connection with its study and report to Congress as mandated by Title III of the Petroleum Marketing Practices Act. The DOE determined the relative shares of total gasoline sales made by the 28 largest refiners to various classes of trade on a year-by-year basis from 1972 through 1979.[1] These refiners' direct sales to commercial end users dropped from 9.6 percent of their total gasoline sales in 1972 to 5.7 percent in 1979. Sales to dealers directly supplied by those refiners dropped from 50.7 percent in 1972 to 36.9 percent in 1979, a loss of 13.8 percentage points. Gasoline sales by these 28 largest refiners through company-operated retail outlets increased from 6.6 percent of the total in 1972 to 11 percent in 1979.

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[1] Final Report, "The State of Competition in Gasoline Marketing," Department of Energy, January 1981, p. 111.

Sales to branded jobbers and unbranded independents, which represented 33 percent of the total in 1972, increased a whopping 13.4 percentage points to 46.4 percent of the total in 1979.

The Lundberg Letter of August 5, 1983, contains information about the population of gasoline retail outlets which allows us to update the trends through 1982. Lundberg's data show a reduction in the total number of retail outlets from 242,470 units at year-end 1980 to 210,875 units at year-end 1982. This represents about a 13 percent decrease for the two-year period. The number of outlets supplied directly by refiners and operated by lessee and contract dealers declined from 110,410 units in 1980 to 84,450 units at year-end 1982.

Likewise, the number of units company-operated by refiners dropped from 16,910 units in 1980 to 15,955 units by year-end 1982. The number of jobber and private-brand independent marketer outlets also declined from 115,150 units in 1980 to 110,470 units at year-end 1982. Thus, of the 210,875 total gasoline outlets operating at year-end 1982, 52.4 percent were supplied and operated by jobbers and private-brand independent marketers; 40 percent were operated by lessee and contract dealers of refiners; and only 7.5 percent were company-operated by refiners.

These data certainly confirm that an upheaval has occurred in gasoline retailing over the last decade. Everyone agrees on this. Disagreement begins with explanations of the causes of the upheaval and with possible cures.

Those of us who oppose S. 1140 are convinced that the turmoil which has been experienced in the gasoline marketplace during the last decade can be fully explained in terms of natural adjustments to drastically changed market conditions and competitive forces. It is a classic example of the way a competitive market, thrown into disequilibrium by new forces beyond the control of the competing sellers, adjusts itself toward a new supply/demand equilibrium among buyers and sellers. There are survivors and losers in this normal adjustment process, but there are no villains.

Some argue that sinister strategies and unfair marketing practices on the part of refiners are responsible for the disappearance of thousands of dealers from the marketplace and for the competitive problems facing those who remain.

Understanding what has happened to gasoline dealers over the last decade begins with understanding that since the Arab Embargo in 1973, the entire oil industry has been shaken from top to bottom. The center of the storm does not lie in the gasoline market, and dealers have by no means been the only players adversely affected. Over the course of the last several years changed economics have forced thousands of independent producers out of business. Hundreds of suppliers of oil field goods and services have declared bankruptcy. On January 1, 1981, there were 324 operable refineries in the United States. By January 1, 1984, this number had been reduced to 247. The refineries which were shut down represented a three-year attrition rate exceeding 23 percent, and 12 of these had daily distillation capacities of 50,000 barrels per day or more. During 1984, 26 refineries closed and 2 started operation for a net decrease of 24. Since January 1, 1981, the primary crude oil distillation capacity of U.S. refineries has fallen from 18.6 million barrels per day to 15.7, more than an 15 percent loss in four years. With refining operating rates on average fluctuating between roughly 64 and 75 percent of capacity in recent months, the shakeout in refining probably hasn't yet completed its course.

It should be obvious from these facts that the upheaval of the last decade has been much wider and deeper than gasoline retailing alone, and that dealers have not been uniquely its victims. It has taken its toll on all segments of the oil industry.

Now I want to turn to a closer inspection of the available data concerning station population and market shares. If it were true, as supporters of S. 1140 claim, that a cause-and-effect relationship exists between refiners' alleged unsavory practices and the marketplace losses suffered by dealers, then we should expect the data to show some correlation between the gains in refiners' company-operated outlets and dealers' losses. We should also expect the data to show refiners gaining at the expense of other non-refiner retailers.

But the data reject the claim. DOE data for the 28 largest refiners show that, as a percentage of their total gasoline sold, sales through company-operated units climbed from 6.6 percent in 1972 to 11 percent in 1979 -- a gain of only 4.4 percentage points. In this same timeframe, sales through dealer-operated stations dropped 13.8 percentage points -- from 50.7 percent to 36.9 percent. And during this same time span, the sales through branded jobbers and unbranded independents jumped 13.4 percentage points -- from 33 percent to 46.4 percent of the total.

It is self-evident from these figures that the market gains enjoyed by jobbers and independent marketers almost exactly match the losses sustained by dealer-operated stations. On the other hand, the gains experienced by refiner-operated outlets represent less than one-third the losses borne by dealer-operated units. In the face of such facts, it is just inconceivable that the plight of dealers can be traced to refiners. By definition, a predator injures all of his competitors by his unfair practices. If refiners generally were guilty of the predatory practices claimed by the supporters of S. 1140, then it would have been impossible for jobbers and independent marketers to pick up three gallons of additional market share for every one gallon gained by the alleged predators. The jobbers and independent marketers were obviously doing something right. Their market share gains from 1972 to 1980 prove that they were by far the most successful among all gasoline retailers in adapting to the drastically changed conditions of the marketplace. Yet the supporters of S. 1140 do not charge this most aggressive and successful group of retailing competitors of any wrongdoing, nor do such supporters even openly recognize and admit the achievements of these highly successful competitors. Instead, they conveniently ignore jobbers and independent marketers as competitive factors in order to concentrate blame on refiners.

What has happened since 1980 does not alter this basic picture. The Lundberg data on station population confirm that from the end of 1980 to year-end 1982 the number of refiner-operated outlets actually decreased from 16,910 units to 15,955 units. At that number they represented only 7.5 percent of the total 210,875 gasoline retail outlets in operation at year-end 1982. These data -- coupled with the fact that market gains by jobbers and independent marketers have placed them in the position of operating more than half of all gasoline retail outlets since 1980 -- should put to rest the notion that refiner-operated units have made sizable gains in, much less taken over, gasoline retailing.

The conclusions just stated are entirely consistent with those contained in the final report of the DOE published in January 1981 on "The State of Competition in Gasoline Marketing." After thorough investigation and study, the DOE stated unequivocally that charges of subsidization, "predatory pricing" and "predatory costing" by refiners in their operation of retail gasoline outlets were unsubstantiated by any credible evidence and unfounded.

There are, of course, logical and valid explanations for the competitive problems which have confronted dealers and which have resulted in a declining population of dealer-operated retail stations.

The explanations are to be found in three basic competitive factors:

1. A decline in total gasoline consumption.
2. Significantly reduced demand at service stations for automotive goods and repairs.
3. Major changes in the regulatory environment.

Total gasoline consumption -- and with it service station population -- rose steadily until 1973. Consumption declined in 1974 and then began a gradual climb to 1978 when annual consumption peaked at approximately 114 billion gallons. By 1982 gasoline consumption had declined 12 percent from the 1978 peak. Consumption of gasoline has increased modestly since 1983 -- rising 1 percent in both 1983 and 1984. The 1978-1982 decline, however, would dictate the closure of a corresponding percentage of retail outlets.

Marathon has not neglected its dealer network. Contrary to general industry trends, we have more Marathon brand stations in operation today than at the end of 1981. We have negotiated 500 new dealer leases, excluding renewals, since the beginning of 1979. We are currently seeking dealers for 13 locations. In the last three years we have taken on as new Marathon branded dealers 115 former dealers of other companies who have withdrawn from the Great Lakes area. All of our approximately 2,300 Marathon brand stations are operated by independent businessmen -- jobbers, distributors and dealers. There are no company-operated Marathon brand stations. These are almost entirely full-service stations. They receive the value of the Marathon brand name, advertising, credit cards, dealer training and all of the other services attendant to a Marathon branded station. Even the gasolines they sell are different from those sold to our subsidiary and unbranded customers. These gasolines are of higher quality, containing additives designed to clean and reduce deposit buildup in intake systems, prevent rust formation in vehicle fuel tanks and assure better fuel economy -- and they are advertised as such by Marathon. It is this type of branded station which we believe will appeal to an important market segment comprised of those consumers who are looking for added value in products and service and are willing to pay a little extra for it. Marathon's marketing strategy is absolutely inconsistent with the accusation that we are trying to drive dealers out of business.

The third major factor affecting gasoline marketing during the last decade has been the government regulatory environment. The distorting effects of government regulations were capsulized by the DOE in its final report to Congress in January 1981 as required by Title III of the Petroleum Marketing Practices Act. It stated:

> Most domestic crude oil and many petroleum products, including gasoline, have been subject to price controls since Phase I of the Nixon Administration's inflation control effort in 1971. The Emergency Petroleum Allocation Act of 1973 (EPAA) authorized the Department to directly regulate gasoline supplies and prices.
>
> Even though it appeared that the trend to larger volume outlets was underway before these various price and allocation regulations were adopted, the regulations did not have a neutral effect in the marketplace. For example, some of the most important regulatory effects include:
>
> - The supplier/purchaser freeze and an allocation system that appears to have favored certain classes of trade at the expense of others. This system was complicated by the equal application rule, guidelines for distributing so-called surplus product, and constant reinterpretation of rules governing new outlet allocations.
> - A freeze of prices between suppliers and purchasers with a cost passthrough system that maintained price differentials between classes of trade at their historical level.
> - A freeze on dealer rentals until November 1975. This reduced the benefits of a dealer system to a refiner.
>
> While each of these regulations had specific effects on individual dealers and other independent marketers, they also created a distortion common to all administrative regulations, the prevention of adjustments to underlying market forces. In a dynamic market, such as gasoline marketing, this can impose heavy costs on consumers. There is no doubt that the regulations benefited individual marketers, while they burdened other marketers. The exact calculus of benefits and costs cannot be precisely determined.[2]

I have now explained Marathon's view of the gasoline and related markets -- how and why they have changed, and our responsive strategy to cope with those changes. I have also dealt with the charges of refiner misconduct in the market which have obviously fueled the legislative proposal before you, and have shown that those charges cannot possibly be true. For emphasis, it should be noted that these misconduct charges have all been investigated and analyzed thoroughly by the Department of Energy, the Federal Trade Commission and the Department of Justice who found the charges to be utterly without support or merit, and who recommended against structural remedies in the gasoline market as S. 1140 would impose.

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[2] Final Report, "The State of Competition in Gasoline Marketing," U.S. Department of Energy, January 1981, p. 210.

The supporters of S. 1140 may point to the potential advantages dealers and other non-refiner marketers would gain if certain refiners are prohibited from retailing gasoline. But there's another side to this coin. This is the damage S. 1140 would inflict on the affected refiners and the consuming public. In Marathon's case, the approximately 1,300 units operated by our subsidiary are valued in excess of $180 million. They employ over 8,300 people and serve customers who buy over 1.6 billion gallons of gasoline annually. It is impractical to convert these units to dealer operation. Divorcement, therefore, would almost certainly equate to divestiture which would jeopardize the jobs of the 8,300 employees and devalue our investment to a fraction of its real worth. With over one billion gallons of gasoline potentially searching for a home, both our refining and marketing operations would be severely threatened. The forced sale of these units to other refiners who are excluded from divorcement, or jobbers, or chain marketers would virtually assure that they would continue to be operated as high-volume, low-margin outlets. This would be a financial windfall for the buyers, but it would do nothing to ease the plight of dealers. When you realize that Marathon represents only a small percentage of the outlets that would be affected by the divorcement provisions of S. 1140, you begin to understand the magnitude and dimensions of the damage that S. 1140 would inflict on the gasoline marketplace.

This legislation does not prohibit all refiners from operating retail gasoline stations. All but 15 of the more than 150 refiners in the United States are excluded under the "small refiner" exemption. Of the remaining 15 refiners, two would also be exempted from divorcement not on the basis of their size or identification with company operations in their gasoline retail marketing, but rather on the completely irrelevant basis of the percentage of their refinery crude oil input purchased from third parties. This classification is utterly devoid of rhyme or reason.

Just how illogical S. 1140's selection of divorcement candidates is can be easily demonstrated. First, the eight largest refiners -- all divorcement candidates -- are as a group least identified with gasoline retailing through company-operated units.
They sold only 4 percent of their sales through such units compared to the national average of 11 percent. Several of these eight operate no company stores at all other than training facilities.

Second, retailing through refiner-operated units is a marketing method practiced primarily by small and medium-sized refiners. It is a strategy employed only by a few of the 40 largest refiners, and is far from a universal practice. Between 1972 and 1978, DOE data show the total gallonage sold by refiner-operated units increased 6.9 billion gallons. Twenty of the 40 largest refiners accounted for 6.7 billion gallons (or 96.6 percent) of this increase. Of those 20 refiners described as "prime movers" by the DOE, less than half would be forced to divorce their retail units under S. 1140.[3] The divorcement candidates would be: Marathon, Sohio, Mobil, Conoco, Arco, Sun and Union. Among the prime movers who presumably would escape divorcement under S. 1140 exemptions are: Clark, Southland (formerly Citgo), Ashland, Hess, Tenneco, Tosco, Crown, United Refining, Tesoro and Total.

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[3] Final Report, "The State of Competition in Gasoline Marketing," Department of Energy, January 1981, Table 4-4.

Third, because of this unreasonable hit-and-miss selection process, S. 1140 would compel divorcement of just about half of the 16,000 company-operated outlets which exist today. Because of the refiners affected and the clustering of more than 7,300 of their company-operated outlets in the midwestern states of Ohio, Michigan, Wisconsin, Indiana, Kentucky, Illinois and West Virginia, the impact of S. 1140's divorcement provisions would be essentially regional rather than national in scope and would be concentrated primarily in these seven states. Since 1979 the legislatures of all of these most heavily impacted states have considered and rejected divorcement proposals similar to S. 1140. Enactment of S. 1140 would thus be tantamount to overriding the legislative will of these states and what they regard to be in their best public interest.

Before closing, let me say a couple of things about the "open supply" provision of S. 1140. This provision -- which would permit a dealer to shop suppliers for the lowest price gasoline and resell it in a branded station -- would create havoc in the branded marketing system and could cause many refiners to abandon it. Though the dealer would theoretically be required to "de-brand" the product, he would be dispensing it through our equipment at an outlet displaying our trademark. As a result, motorists could no longer be assured of motor fuel product quality. Both consumers and manufacturers (i.e., refiners) would suffer the consequences.

The Dealer Tankwagon Price is a package price which a dealer pays for gasoline delivered from the rack to the dealer's station enhanced by the added values of the refiner's trademark and credit card usage and a bundle of branding services which supports and benefits the dealer. In Marathon's case, as I pointed out earlier, our branded dealers, jobbers and distributors even receive different and better gasolines than we sell to our unbranded customers. Because the terminal price represents the commodity price of unbranded gasoline only and available only at the terminal, such a price will normally be lower than the DTW in the same area on a given day. Thus, a dealer could theoretically buy unbranded gasoline at the terminal from us at a price lower than his suppliers' DTW, and this same would hold true for our dealers buying unbranded gasoline at the terminal from other suppliers. They are not the same, but S. 1140 would decree the differences to be irrelevant. If my dealer can buy gasoline from another supplier cheaper than he can buy it from me, then S. 1140 would free him from his contract to me so he could sell another refiner's gasoline at my station. This is not right.

For all these reasons, I urge you to reject S. 1140.

Thank you. I will be happy to answer questions.

STROM THURMOND, SOUTH CAROLINA, CHAIRMAN

CHARLES McC. MATHIAS, Jr., MARYLAND
PAUL LAXALT, NEVADA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
JOHN P. EAST, NORTH CAROLINA
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JEREMIAH DENTON, ALABAMA
ARLEN SPECTER, PENNSYLVANIA
MITCH McCONNELL, KENTUCKY

JOSEPH R. BIDEN, Jr., DELAWARE
EDWARD M. KENNEDY, MASSACHUSETTS
ROBERT C. BYRD, WEST VIRGINIA
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZONA
PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS

DENNIS W. SHEDD, CHIEF COUNSEL AND STAFF DIRECTOR
DIANA L. WATERMAN, GENERAL COUNSEL
DEBORAH G. BERNSTEIN, CHIEF CLERK
MARK H. GITENSTEIN, MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510

October 15, 1985

Mr. G. Norman Nicholson
Marathon Petroleum Company
539 South Main Street
Findlay, Ohio 45840

Dear Mr. Nicholson:

As a follow-up to the Committee's hearing on October 9, 1985 concerning S. 1140, the Motor Fuel Sales Competition Improvement Act of 1985, I would appreciate your written responses to the enclosed questions on behalf of Senator Arlen Specter. Please return your answers to the Committee not later than the close of business on Wednesday, October 30, 1985. If you have any questions, please contact Ken Starling at (202) 224-8061.

With kindest regards and best wishes,

Sincerely,

Strom Thurmond

Strom Thurmond
Chairman

ST:jvx
Enclosure

SENATOR SPECTER

QUESTIONS--S. 1140, the Motor Fuels Competition Act

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1. How many stations are owned and operated by the 20 largest oil refiners? What percentage does this represent? What were the comparable figures in 1970, 1975, and 1980?

2. What is evidence that refiners engage in predatory pricing of gasoline re independent dealers? Isn't this already illegal under existing law?

3. What has been the effect of permitting dealers to purchase a certain percentage of their requirements on the "open market," where it has been required pursuant to settlement agreements? Is there any evidence of confusion among consumers as to the source of the product they are buying?

G. N. Nicholson
Vice President
Marketing, United States

Marathon Petroleum Company

Findlay, Ohio 45840
Telephone 419/422-2121

October 29, 1985

The Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Thurmond:

In response to your letter dated October 15, 1985, listed below are Marathon's responses to the questions pertaining to S.1140, the Motor Fuels Competition Act, which were posed by Senator Specter.

1. Due to the size and complexity of the gasoline distribution system, definitive statistics on retail outlets are difficult to derive. Perhaps the most comprehensive data on gasoline marketing were collected and analyzed by the U.S. Department of Energy. In its study, "Deregulated Gasoline Marketing," which was published in draft form in March 1984 by DOE's Office of Competition, the department charts the history of refiner-operated retail outlets from 1972 through the first nine months of 1981. In 1972, there were 13,300 such outlets nationwide. The number declined slightly in 1973 and 1974, then increased the following three years -- peaking in 1977 at 16,200 units. The number of refiner-operated outlets declined in each year after 1977, to the point where there were only 12,700 outlets in September 1981 when DOE ceased to collect data on this subject.

   The July 6, 1984, Lundberg Letter provides more recent data on refiner-operated units at the national level. Lundberg estimated the total universe of gasoline retail outlets in 1984 to be 210,875 units. (This count includes outlets, such as C-stores, doing less than 50% of their total business in gasoline sales, and thus does not correlate with Department of Commerce data.) Lundberg concluded that the 16 largest oil companies salary-operated a total of 7,016 retail outlets in 1984. This represented only 3.3% of all retail outlets.

2. There is no evidence that refiners engage in predatory pricing practices. In January 1981, the DOE published its report, "The State of Competition in Gasoline Marketing," as mandated by Title III of the Petroleum Marketing Practices Act. After thorough investigation and study, the DOE stated unequivocally that charges of

subsidization, "predatory pricing," and "predatory costing" by refiners in their operation of retail gasoline outlets were unsubstantiated by any credible evidence.

"Predatory pricing" is already unlawful under the federal antitrust laws, as well as under the antitrust laws of most of the states. Specifically, Section 2 of the Robinson-Patman Act prohibits price discrimination between two buyers where the effect would be an injury to competition; many state laws are analogs. Further, many states have pricing statutes which are more stringent than the antitrust provisions against predatory pricing.

3. So-called "open supply" provisions are contained in the voluntary agreements between a number of large refiners and a class of dealers to settle a recent class action suit known as the "Bogosian case." Some leasee dealer contracts with refiners also give them the right to sell more than one brand of gasoline -- subject to a variety of stipulations and restrictions. In Marathon's observations of the marketplace, we find dealer usage of open supply provisions to be fairly infrequent.

   Marathon is convinced that the widespread use of open supply provisions -- such as the one contained in S.1140 -- would create havoc in the branded marketing system and could cause many refiners to abandon it. Motorists could no longer be assured of motor fuel product quality since the source of supply would be unknown. The value of the company trademark, which currently benefits both refiner and dealer, would be substantially diminished.

   An example of the uncertainties (and potential harm) of open supply can be seen in EPA's current program to significantly reduce the use of lead in gasoline. Refiners and marketers are using a variety of additives to replace the octane-enhancing properties of lead. Some are now blending ethanol or methanol into their gasolines. Yet many storage tanks at service stations are not properly treated to accept such fuels. Thus, if branded dealers had the right to purchase from any supplier, the result could be contaminated product and/or permanent damage to the lessor's tanks. The motorist would suffer, as would the refiner whose trademark is displayed at the outlet.

In conclusion, let me again state Marathon's opposition to S.1140. We find the legislation ill-conceived and arbitrary in its application. While no one can deny the turmoil experienced in the gasoline marketplace over the last decade, we believe it can be fully explained in terms of natural adjustments to drastically changed market conditions and competitive forces. Customers have benefited. While S.1140 would, arguably, protect a class of competitors, it would do nothing to promote competition.

We appreciate being afforded the opportunity to present our views on this issue.

Sincerely,

G. N. Nicholson
Vice President
Marketing, United States

GNN:bd

Senator METZENBAUM. Thank you. Did not Marathon used to have Marathon stations?

Mr. NICHOLSON. Marathon still has Marathon stations, Senator, but they are all dealer-operated.

Senator METZENBAUM. And then you also have, did you say, 16 brand names?

Mr. NICHOLSON. 1,300 secondary brand outlets that are company-operated.

Senator METZENBAUM. But there are a number of operations that you have under different names, is that correct?

Mr. NICHOLSON. That is correct, sir.

Senator METZENBAUM. And how many different names are there?

Mr. NICHOLSON. There are six or seven in all of our markets.

Senator METZENBAUM. Are those listed in your statement?

Mr. NICHOLSON. Yes, sir; seven.

Senator METZENBAUM. And do any of those company-operated stations—have they, do they ever sell at a lower price to the public than the price which the dealers who buy from you are required to pay?

Mr. NICHOLSON. Let me first respond to your question, Senator, by setting the stage. There are no credit cards at our secondary brand stations. There is little or no advertising, and they receive a different gasoline with less additives than we put into our Marathon brand gasoline.

Therefore, we are talking about a different product with different services, and therefore their prices are different and could be different at retail than the price charged to a dealer because the dealer is getting a different product and a different set of services.

Senator METZENBAUM. There are no situations where the same product is sold to the independents as well as at your stations?

Mr. NICHOLSON. There are no situations where Marathon brand gasoline is sold by the company in a company-operated outlet.

Senator METZENBAUM. There are no situations where Marathon brand gasoline is sold at a company-operated station?

Mr. NICHOLSON. Company-operated outlet, that is correct, sir.

Senator METZENBAUM. What brands do those companies sell?

Mr. NICHOLSON. Bonded, Gastown, Speedway, Port, Value, Cheker, and ECOL.

Senator METZENBAUM. Those are all your company names?

Mr. NICHOLSON. Yes, sir.

Senator METZENBAUM. And you are saying that the quality of the product at those stations is less than the quality of the product that you sell to the independent dealers?

Mr. NICHOLSON. We have more performance additives in the gasoline that we sell under the Marathon brand than we sell at wholesale to our own company-operated outlets and to our wholesale customers, who also buy the same gasoline.

Senator METZENBAUM. Well, Mr. Nicholson, there must be some cases where the quality of the two products is equal.

Mr. NICHOLSON. There are none, Senator.

Senator METZENBAUM. There are none?

Mr. NICHOLSON. Yes, sir.

Senator METZENBAUM. And there are none where the services available are equal?

Mr. **Nicholson**. That is correct, sir; there are none.

Senator **Metzenbaum**. So that all of your company operations—you are saying that yor products at Gastown and the various other names that you have are less quality than the product that you sell to independent dealers?

Mr. **Nicholson**. They have fewer performance additives, and therefore do not do for an engine what our branded gasoline does.

Senator **Metzenbaum**. They what?

Mr. **Nicholson**. They have fewer performance additives, and therefore do not give the advantages that one gets when one buys Marathon gasoline with the performance additives.

Senator **Metzenbaum**. What is the difference in the cost to the company for those additives as compared to being with them or without them?

Mr. **Nicholson**. That is a competitive question, Senator, that I am not going to answer.

Senator **Metzenbaum**. When did the company adopt this policy of selling at its stations a lesser quality product than that which it sells to its dealers? Since United States Steel took you over?

Mr. **Nicholson**. No, sir; between 3 and 5 years ago. I do not know the exact date.

Senator **Metzenbaum**. When did United States Steel take you over?

Mr. **Nicholson**. A couple of years ago. It was prior to that, Senator. It has been in practice for a considerable length of time. It has nothing to do with the merger between United States Steel and Marathon.

Senator **Metzenbaum**. How much difference would there be in the price that you would be selling at retail that so-called lower-quality product than the price that the independent dealer would be paying?

Mr. **Nicholson**. Senator, it varies with the competitive market and I am not able to give you any difference. Obviously, our stations operating in the secondary brand market are competing with similar type outlets. They are competing with outlets that do not offer credit cards, as we offer to our dealers without charge.

There is little or no advertising involved. It is strictly self-service gas-and-go; limited other items that are sold, cigarettes, et cetera. Their prices, therefore, vary daily and from station to station depending upon their competitors. So it would be difficult for me to give any answer that would be any sort of meaningful number. There are 1,300 different situations.

Senator **Metzenbaum**. At none of them are credit cards accepted?

Mr. **Nicholson**. That is correct. A limited number of credit cards have been held over from previous acquisitions, but as a general matter in most of the stations, no credit cards.

Senator **Metzenbaum**. Mr. Kowal.

STATEMENT OF JAMES D. KOWAL

Mr. **Kowal**. Thank you, Senator. Atlantic Richfield Co. has submitted a statement over my name, J.D. Kowal, Wholesale Marketing vice president, and with your permission I would ask that that

9-page statement and the two exhibits be incorporated in the record, and I will certainly waive reading it.

Senator **Metzenbaum**. It will be.

Mr. **Kowal**. Two quick items, Senator, in connection with some prior testimony this morning just in the interests of accuracy.

In fact, in framing one of your questions to the FTC witness, Mr. Rowe, you alluded to a statement they had filed in the State of Washington that said if predatory pricing existed, they thought the law would deal with it, and it turned out they had not done any predatory price cases in the State of Washington.

But I would like to inform you that I have attended every single hearing of the Washington State Legislature in calendar year 1985 up through the defeat of the bill, following which the Senate decided they should have special field hearings every single month for the rest of the year; we have had two of those already and there has not been one single piece of evidence of predatory pricing in the entire State of Washington turn up during the entire year.

Two cases were offered. One happened to involve ARCO. The two stations involved were 35 miles apart on the same day and it involved a difference of a penny. The second instance involved Texaco, and the two invoices offered in testimony turned out to be about 11 days apart.

I am not saying it cannot possibly happen, but that is such an incredibly sensitive issue that I do encourage you to look closely at any examples that are offered or proffered, or any generalities.

Another problem that we have run into is the tremendous variation in volumes that our dealers do. A dealer, for example, doing 50,000 gallons a month gets a delivery about every 5 days. Our more successful dealers, and most of our company operations, get a delivery every single day.

And in a price-changing market, if you are selling gasoline today that you bought 4 days ago and the price has dropped 2 cents since then, you are stuck. Of course, you will do pretty well when it is going the other way, but the fact of the matter is that the dealer who buys a load every day is right on top of a changing market, compared with the lower-volume dealer. It is just the way the business operates, and prices do change daily.

Senator **Metzenbaum**. What is the average for your company-operated stations?

Mr. **Kowal**. Volume, sir?

Senator **Metzenbaum**. Yes.

Mr. **Kowal**. I have some concern about competitive sensitivity. On the other hand, ARCO is the barometer. Let me call it 150,000 to 175,000. It varies a little bit by State, and it is the same for our dealers. It is about three to four times the national average, and probably 40 percent above number two, whoever that may be.

But to do that kind of volume with a 9,000-gallon truck means you have got to get a delivery every day. Some of our stations are getting two a day and we have some dealers who exceed that and get as much as 20,000, or 25,000 gallons a day.

Senator **Metzenbaum**. Did you not go out of a substantial portion of your retail operations, or am I wrong about my facts?

Mr. **Kowal**. Have we withdrawn? Yes, sir. It is still America and you have a right to fail, and we failed on the eastern United States marketing—primarily, refinery-driven economics. But we have withdrawn from every State east of the Mississippi.

We sold Pennsylvania and New York last week, and the balance of New England and the entire east coast colonial supply system, we will be out of by the end of November. We will be a west coast marketer by the first of the year.

The other point that I wanted to mention was in the enumeration of States that restrict company-operated service stations by refiners of any size, California was listed. California has no restraint. The California Legislature has rejected divorcement six times in the last 10 years.

Senator **Metzenbaum**. Incidentally, I want to say to all of you, I am not at all impressed with the fact that the State legislatures have rejected divorcement. That does not prove anything to me except that you are damned effective lobbyists in the States.

I used to be in the State legislature, and you do not have to be too effective to be good around a State legislature.

Mr. **Nicholson**. I will be sure to report that to the Ohio Legislature, Senator.

Senator **Metzenbaum**. Pardon?

Mr. **Nicholson**. I will be happy to report that to the various members of the Ohio Legislature.

Senator **Metzenbaum**. Be my guest, be my guest; use my quote.

Mr. **Kowal**. Well, Senator, I would assume that if they have rejected it and it is irrelevant, it would be equally irrelevant if somebody has passed it. But I only wanted to make sure there was not a statement in the record that it even existed in a State where it does not exist, for whatever reason it was offered in the record.

Our perception of the environment of the 1974 to 1981 period, during which controls pretty well bottled up competitive things and natural change that would have occurred, unleashed itself in 1981 and 1982 in a condition that we have described resulting in literally turmoil, turbulence.

A lot of Government studies, a lot of private studies were undertaken. The results have consistently indicated healthy competition, no predatory pricing, no subsidized direct operations.

There has been trauma for some people in the marketplace. Legitimate trauma, however, I suggest—with gasoline down since the peak demand of 1978, there have been surplus people, stations, pipelines, terminals and refineries that are all going through attrition and consolidation.

But the fact of the matter is, if the trauma is real, and it is——

Senator **Metzenbaum**. Excuse me. One of these machines is talking, saying we have got a 15-minute rollcall. I thought it was here; I could not find it to turn it off.

Mr. **Kowal**. Yes, sir.

Senator **Metzenbaum**. I did not mean to have that going over your voice, sir. Go right ahead.

Mr. **Kowal**. I am simply suggesting that that trauma in the marketplace is real for many, many players at all those different levels. But if that trauma is the result of legitimate factors—and every single study has tended to indicate by our usual methods of measuring things in America that it is legitimate and not mischievous—then it seems to me the legislative issue is very clearly framed.

Should the Government artificially intervene in the marketplace at the expense of penalizing the efficient, successful marketer and dealer, and tax the consumer with the higher prices that result, in order to subsidize that segment of each level of the industry that is threatened, including the marketing side?

The two subjects that are addressed in this bill, I submit to you—divorcement and open supply—both represent this type of intrusion because there is no evidence of abuse or mischief to justify either action.

Both are expressly endorsed by the very dealers that are seeking your support for programs that will extend their business and enhance their personal finances. Both threaten consumers and successful dealers.

With respect to the Bogosian matter, one of my pet peeves in all the years that I have been exposed to it is a continuing fact that persists until today. Something in excess of 20 percent of all the gasoline that we manufacture reaches the public through a dealer who owns his own service station; we have nothing to do with it.

None of those dealers choose to do the thing that this bill would purportedly allow them to do. If it is your business and your long-term survival and acceptability to the public is important to you, you do not put up five brands at your service station and confuse everybody, or two or any other number.

My own experience is that 20 percent of all my customers have this right without regard to any contract with me or anything else. They have the unfettered right as the absolute owner of their own property to market any way they want to and any brands they want to.

If they do not market ARCO, do you know what they do? They do not bring in something else at the fourth pump. They tell me to take a hike because they would rather be a Chevron dealer or a Shell dealer or a Union dealer.

Yet, as I say, 20 percent of all the gasoline I sell is to people who say, I want to be an ARCO dealer; I want their price, I want to catch on that niche that they have established with the public; I want to be their style.

Now, if they want to be a Union Oil-style dealer or a Chevron-style dealer, then they are not going to buy from me. We have all begun to develop these niches. They are targeting the public because that is where you make money, unless you do not know how, in which case you turn around and try to make it off your supplier or somebody else subsidizes you or you quit. That is it, Senator.

[Prepared statement and letter follow:]

PRESENTED BY:

J. D. KOWAL
VICE PRESIDENT
WHOLESALE MARKETING
ATLANTIC RICHFIELD COMPANY

S.1140 would require that the large integrated refiners cease operating company stations thus removing a class of competitors from the marketplace. The bill also has an "open supply" provision which would permit a branded dealer to sell non-branded product in his station by displaying a disclaimer on the dispenser that the product was not that of the branded refiner supplier. Atlantic Richfield opposes S.1140 for the following reasons.

THE CHANGING GASOLINE MARKETPLACE

Intense competition returned to the gasoline marketplace after it was deregulated in January, 1981. With a deregulated marketplace, some dealers and their trade associations have stepped up their efforts to achieve enactment of protectionist legislation designed to insulate their businesses from the realities of the current competitive environment.

Their claim is that they are being driven out of business by refiners who engage in predatory pricing, subsidize their company operated stations, implement inequitable rent increases and engage in other unfair practices.

Their legislative efforts at both the state and federal level have produced a wide range of bills running the gamut from divorcement to open supply, minimum mark-up and restrictive pricing legislation, to name just a few. Such legislation is reminiscent of the regulatory environment of the seventies which produced high gasoline prices, high margins, frozen business practices and subsidization of the inefficient.

Unlike many marketers, those dealers seeking protectionist legislation have not prepared themselves for the turbulent competitive environment of the eighties and are seeking to re-establish the favored treatment they enjoyed under controls.

It is true that the service station population has been declining. However, dealers are not the only ones affected by the difficult gasoline marketplace of today. Some jobbers have gone out of business or have been acquired by larger jobbers. Over a hundred inefficient refineries owned by independents and majors have shut down in the past five years and press reports have documented the activities of various oil companies who have shed their losing operations and restructured to improve their financial outlook and competitive position for the future.

The trauma of today's gasoline marketplace has nothing to do with unfair marketing practices as alleged by supporters of legislation such as S.1140. In fact, it is due to:

- **Less demand for gasoline; down almost 12% since gasoline demand peaked in 1978.**
- **Excess refining capacity. In 1984, the nation's refineries ran, on average, at approximately 76% of capacity.**
- **Increased costs of doing business.**
- **Changes in consumer preferences; these have played a major role in the "shake out" occurring in gasoline marketing especially in regard**

to "full service" stations. These changes include the desire on the part of most consumers to purchase gasoline at the lowest possible prices by serving themselves. About 73% of the gasoline purchased in the United States is purchased through self-serve pumps versus only 10% purchased through that mode of operation in 1972. High volume outlets such as gasoline pumpers and convenience food stores have been particularly successful in capturing a large share of the price conscious consumer market. Specialty automotive shops, mass merchandisers and new car dealers have also gained an increasing share of the automotive product and service market which has contributed to the demise of many "full-service" gasoline stations.

The allocation and price controls tended to mask the changes taking place in the marketplace or stop them entirely. With deregulation, an entire array of changes were unleashed upon the marketplace in a very short time frame. Many dealers have thrived on these changes and profited. Typically, they were those who reduced their costs of operation, employed innovative marketing techniques and adopted a high volume, low margin strategy to appeal to the price conscious shopper. Many also developed ancillary businesses at their locations to offset lost revenues from their declining service garage business.

Others have not been so fortunate. They have not adapted. Some have gone out of business. Others have seen their profits eroded. This is not the result of some plot on the part of major refiners to drive them out of business. Instead, it is the result of a turbulent, intensely competitive marketplace affected by declining demand and excess capacity which has caused downward pressure on profit margins. **With or without divorcement or open supply, the number of dealers will continue to decline until the demand for their services is balanced with the available supply.**

Our comments relative to the specific provisions of S.1140 are as follows:

DIVORCEMENT

Divorcement produces higher prices to consumers.

A study by Purdue University Professors John Barron and John Umbeck dramatically documents this anti-consumer impact. See the attached Exhibit "A" which summarizes their findings.

In addition to divorcement, Maryland also passed an anti-competitive statewide uniform pricing law. What resulted is clearly shown in the attached Exhibit "B" depicting the difference in pump prices between the Philadelphia and Baltimore Metropolitan areas on an ex-tax basis. During the pre-divorcement time period in January 1979, pump prices between the two metropolitan areas were only about 1¢ apart. By December 1984, self-serve prices in Philadelphia were about 4¢ less than Baltimore while full-serve prices were an astounding 19.5¢ to 20¢ less in Philadelphia, depending on grade. It is no wonder that full-serve dealers are the most ardent proponents of divorcement legislation. Company operated stations generally price on the low end of the price spectrum. Divorcement removes a class of competitors from the marketplace. We believe that consumers are best protected by markets in which multiple suppliers are allowed to compete for their business and offer a full menu of prices. When legislation is enacted that reduces or restricts the number or type of competitors, the consumer is invariably beset with higher prices.

Stations operated by major refiners also provide benefits to the entire dealer organization. One benefit is that they are used to test new techniques. Such experiments are often too expensive or risky to be tested by an individual dealer. Once experimental programs prove successful, refiners can make them available to their independent dealers. Company operated stations also provide refiners with first hand knowledge regarding consumer desires and how the market works. This knowledge is imperative in today's intensely competitive, rapidly changing marketplace. The draft DOE study, "Deregulated Gasoline Marketing -- Consequences for Competition, Competitors and Consumers", found that if company operated stations of a given brand do well, then independent dealers of the same brand also do well. The point is that if the company stores portray a good image to the public and attract a substantial clientele, then that success tends to increase the opportunities for success for the independent dealers of the same brand in the area. In other words, their fortunes are intertwined.

Refiners will be reluctant to build new service stations if divorcement legislation is enacted.

The investment required to purchase a prime service station location and construct a new facility can run as high as a million dollars. It is unlikely that prudent investors will build new service stations where they do not have the option of determining who operates the station. New investments in service stations are beneficial to the economy and provide the opportunity for additional employment to staff the stations being built.

The elimination of refiner operated stations produces another unfortunate side effect. These facilities are operated by salaried employees. Many of these employees will find themselves unemployed if refiner operated facilities no longer exist. Even if an independent dealer should take over the divested facility, there is no guarantee that the employees will be retained.

There is no rationale to support the view that major refiners will drive their own independent dealers out of business.

The degree of concern expressed by some about the number of major refiner company operated stations and their ability or intent to force independent dealers out of business is without merit as the following DOE statistics clearly show:

	Average Number of Refiner Operated Service Stations during		
	12 Mos. 1972	12 Mos. 1977	9 Mos. 1981*
15 Major Refiners	5,917	6,805	5,761
All Other Refiners	5,336	8,851	7,099
Total	11,253	15,656	12,860

(*The last period the DOE compiled these statistics.)

The 15 major refiners decreased, by 156 units, the number of directly-operated stations during the period. Other refiners, who generally operate in smaller geographic areas, increased their portfolio of such stations by 1,763. The Lundberg Company has published statistics for the U.S. service station population for the time period noted above. Based on the Lundberg data and the DOE service station count statistics, the 15 major integrated refiners operated:

- **2.1% of all retail service stations in 1972.**

- **3% of all stations in 1977.**
- **And 3% in 1981 when DOE ceased publication of such statistics.**

Since then, the Lundberg Company has published a survey of company operations covering 16 majors for 1984. (Sohio was not included in the DOE 15 majors category.) **The 1984 Lundberg Survey showed that the company operated stations included in the 16 major oil companies' portfolio represented just 3.33% of the total service station population in the nation.** The Lundberg publication noted that jobbers and private branders have placed more emphasis on company operations than the majors. Specifically, Lundberg stated that members of the Society of Independent Gasoline Marketers of America, SIGMA, had some 12,600 company operated stations while members of the Petroleum Marketers of America Association, formerly NOJC, had about 16,000.

These statistics mean that someone other than the 15 or 16 major refiners operated about 97% of all the service stations during this period of time; certainly there is no evidence of a massive movement to company operated stations by the major refiners. Thus, the claim that major oil companies are driving their dealers out of business through the use of company operated stations lacks credibility when viewed in the context that the majors directly operate only 3% of the nation's stations and that percentage has remained stable over time.

Furthermore, no logical reason can be given to explain why major refiners would want to damage their independent dealers. Major refiners have a huge investment in marketing assets operated by their branded independent dealers. It would make absolutely no sense for a refiner to take any action that would damage its network of independent dealers. Any such action that weakened its branded independent dealer operations would only serve to undermine the refiner's competitive position and thereby reduce its profits.

Proponents claim that divorcement legislation is required since refiners engage in predatory pricing through their company operated stations to the detriment of their independent dealers. Atlantic Richfield can only speak to its own operations. ARCO company operated stations are run by a subsidiary company. The facilities operated by the subsidiary company are leased from Atlantic Richfield on the same terms as those leased by ARCO independent dealers. Company operated facilities and ARCO independent dealers supplied by Atlantic Richfield that are located in the same geographic area pay the same price for ARCO gasoline. Therefore, these company operated stations can only be a "threat" in the sense that if they are more efficient, they may then be able to offer consumers lower prices.

Many prominent government bodies have rejected the concept of divorcement.

The Department of Justice, the Department of Energy, and the Bureaus of Competition, Consumer Protection and Economics of the Federal Trade Commission have recommended against divorcement bills. The Department of Justice has taken the position that such laws should only be enacted if there is a serious failure on the part of the free market to allocate goods and services. They have found there is no evidence to support such a conclusion.

Furthermore, there is already a body of law in effect that protects dealers. These include (1) the anti-trust laws regulating pricing activity and (2) the Petroleum Marketing Practices Act which prohibits arbitrary lease terminations and nonrenewals. State legislatures have also overwhelmingly rejected divorcement bills. Since 1974, legislation dealing with retail divorcement was introduced over 200 times. Only Connecticut, the District of Columbia, Delaware, Maryland and Virginia have enacted such laws. Florida had a divorcement statute but it was recently repealed. Congress has also considered and rejected divorcement several times. In an effort to cut through the rhetoric involved, Congress dropped divorcement from the PMPA and mandated a study which concluded, two years later, there was no justification for divorcement of refiner operated stations.

OPEN SUPPLY

S.1140 would allow service station dealers the right to purchase gasoline from sources other than their refiner-supplier. The rationale for this provision is that it would increase competition in the gasoline marketplace and allow dealers to buy gasoline at lower prices.

There is no need for open supply legislation since dealers already have the right to buy gasoline from other sources.

Dealers supplied by the major integrated refiners already have the right to purchase gasoline from outside sources. The *Bogosian* settlement confirms the rights of dealers to determine if multiple brand operations are an attractive and economically viable way of doing business.

One of the disturbing aspects of S.1140 is that it puts government in the position of encouraging dealers to purchase from outside sources. **The effect will be to weaken gasoline brand marketing to the detriment of the dealers this bill is alleged to protect.**

Refiners and their branded dealers have historically entered into supply agreements to the mutual benefit of both parties. In addition, thousands of branded dealers throughout the nation lease stations from refiners. This arrangement has enabled thousands of individuals to enter the service station business with a minimum of investment. The purchase of a prime property and construction of a new facility is extremely expensive. Very few dealers have the financial resources to make such large scale investments. Furthermore, refiners continually make improvements to their stations which require extensive sums of money.

In addition to the investment in physical facilities, refiners also commit substantial resources to other areas that aid their branded dealer organization. These include training programs, business counseling, research to develop better products and new marketing techniques, advertising and sales promotion and a whole host of other services designed to enhance the value of the brand.

The rationale for the branded marketing relationship between dealers and refiners is much different than for those purchasers who rely on the vagaries of the spot unbranded market where the long term security of supply can be tenuous and prices can vary widely. Independent branded dealers enter into agreements with major refiners because they are assured of a stable source of supply as well as obtaining the many benefits of a well known brand to help make their businesses profitable. Refiners commit to branded marketing because they believe their dealer organization represents a stable, efficient way to market their products.

Tens of thousands of dealers own their own property or lease it from a non-refiner. They obviously can market any way they want to and almost universally elect to go with one brand because they know consumers are not responsive to mix brand marketers.

Passage of S.1140 will produce an atmosphere which will encourage dealers to buy elsewhere. As a result, refiners will be hard pressed to economically justify the large investments needed to support a branded marketing operation. Legislation designed to weaken the relationship between refiners and their branded dealers will adversely affect both groups.

Motorists will be misled if S.1140 is enacted.

Millions of motorists purchase gasoline on the basis of brand preference. For example, customers purchasing ARCO branded gasoline know that these products are supplied by a company which has a reputation for dependability and integrity and which stands behind its products.

Customers are attracted into stations of a specific brand through the utilization of highly visible, readily identifiable color schemes, logos and signage. **Imagine the dismay and anger of a motorist who drives into an ARCO station, stops his car at the pump island and sees a small sign on the pump proclaiming that the pump dispenses "XYZ Gasoline".** Customer confusion could become even more widespread with open supply since many customers may not even notice a small sign placed on the pump.

It is important to realize that motorists select the brand they desire to purchase before they enter the station property and not when they stop their car at the pump island. The motorist who is deceived will most likely vent his anger at the refiner whose "flag" flies at the station. He may even cease purchasing the brand which is not only detrimental to the refiner but also to the other dealers that market the specific brand.

S.1140 provides inadequate protection against the potential for mislabeling, commingling and environmental damage.

Considering the enormous potential liabilities associated with flammable and/or toxic substances, air and water pollution controls, and potential problems with hydrocarbon emissions, much more stringent product identification requirements are needed. In today's world, where "cradle to grave" liability for products exists or is eagerly sought after, no manufacturer can be indifferent to possible substitution for, or contamination of, his products by others over whom he has no control.

The Bogosian settlements contain necessary and appropriate safeguards designed to protect the legitimate interests of the oil company defendants in two areas. First, they protect against the mislabeling and commingling of gasoline and impose various duties on the dealers to clean out tanks and pumps before switching from one brand of gasoline to another. They also give the defendant a right to monitor the dealers' labeling of pumps to protect against confusion and deception to the public.

Second, many of the decrees (including ARCO's) also provide safeguards to protect the defendants from claims for environmental damage which might arise from the storage and dispensing of third party gasoline by the dealer. Thus, the decrees establish strict standards governing the installation and operation of additional tanks and pumps and require that the dealer do certain things such as maintaining appropriate insurance.

The proposed legislation contains no such safeguards, although it does provide that the FTC is to issue regulations governing compliance with the notice provision. The statute is, however, silent as to the content of these regulations and offers the refiner-lessors no assurance that they would be protected against claims made by others, such as consumer groups, for commingling and mislabeling and by the EPA and state agencies for environmental injury arising out of leakage from tanks installed by the dealer or by the storage of corrosive fuels.

The potential for increasing the problem of petroleum tax evasion.

There have been many reports from certain states which document that unscrupulous retailers and wholesalers have been defrauding the states out of petroleum taxes. New York State has recently enacted new laws designed to cope with this growing problem. Much of the problem relates to certain retailers purchasing gasoline from outside sources. With the major problem of petroleum tax evasion, enactment of S.1140 could hamper state governments in attempting to audit and seek compliance with their tax laws.

CONCLUSION

S.1140 represents a view that independent dealers are threatened with extinction by the actions of refiners. This is not true.

The gasoline marketplace is changing, but we believe those changes are the result of shrinking demand as well as competitive and economic factors that affect all marketers. Those marketers who adapt their operations to the changing conditions in the marketplace will survive and profit in the eighties and beyond.

Government studies as well as private studies have documented the changes occurring in the marketplace, rejected the theory of predatory actions on the part of refiners and have acknowledged that the consumer is the beneficiary in a marketplace characterized by intense competition. The draft study, "Deregulated Gasoline Marketing--Consequences for Competition, Competitors, and Consumers", published by DOE in March, 1984 succinctly states the case: **"The market changes are not the result of anti-competitive activity, but the result of the competitive process itself forcing adaptation to these underlying structural changes. The many legislative proposals now circulating at both the federal and state level are unwarranted efforts to block or undo the effects of these market forces.**

At best they are useless. At worst they are expensive counter-productive efforts to deny consumers the benefits of increased competition and efficiency. Ultimately, these legislative proposals hurt the very businessmen they ostensibly are intended to help, while they harm the competitive process, competitors and consumers."

Compared to regulated systems, the free market system is enormously superior. It is more productive, more efficient and more effective in providing the goods and services consumers need at the lowest possible prices. Thus, we urge the rejection of S.1140.

EXHIBIT "A"

The Maryland Divorcement Experience Updated:

A Summary By

John M. Barron and John R. Umbeck
Professors of Economics
Purdue University

The state of Maryland enacted divorcement legislation which, effective July, 1979, prevented refiners from operating retail gasoline service stations in that state. Because of the potential impact of this "divorcement" legislation, Professor John Barron and I conducted a research project measuring the effects of divorcement legislation in the state of Maryland. This study was undertaken in the fall of 1981 and was underwritten by the Committee of Independent Refiner Marketers.

The study clearly revealed that the legally forced franchising of company operated stations in Maryland had several negative impacts, including higher gasoline prices at stations directly affected by the law, higher gasoline prices at immediate competitors, shorter station hours, and a decline in the number of service stations in operation within the state. In November and December, 1982, we undertook an extensive update of our original research. That update has been underwritten by the Atlantic Richfield Company. As was the case with the original study, control of all phases of the study, from design through analysis, remained with the authors. This report summarizes the latest findings. For those interested in reviewing the technical details, a copy of the complete study is available upon request.

Conclusions

After updating our original study we conclude that our earlier results still hold. Maryland's divorcement legislation has caused retail gasoline prices to increase not only at stations directly affected by the law but also at nearby competitors. The new updated study further substantiates that the legislation has led to fewer service stations being available to Maryland motorists and shorter hours of operation at many remaining stations.

The updated study relied upon a different data source (the Lundberg organization) than the original study (refiner supplied information) and included a substantial validation of the data provided by that independent source. The consistency of the findings of the two studies provides further substantiation of the accuracy of the conclusions. Allegations of possible data bias, while certainly a potential problem in any economic experiment, do not appear to affect this particular study of the Maryland divorcement experience. Each of our tests, direct and indirect, revealed at each stage no evidence of error (either deliberate or accidental) in the data.

Study Detail

Original Project Design

In our original study, we contacted representatives from each oil company which operated stations directly affected by divorcement legislation. Each received a questionnaire requesting information on all of their company-operated stations and their nearby competitor's stations. We asked for information on retail prices for each grade of gasoline and each type of service over a five year period before and after divorcement took place. We also collected data on the different types of services offered at each station and the hours they remained open each week. Armed with this data, we isolated and measured the actual effects of the divorcement law and we constructed a detailed picture of about 150 local Maryland gasoline markets. Each market contained one gas station which was legally forced to divorce and four or five nearby competitors. Within these local markets we tracked each station's retail prices of gasoline sold, both self and full serve, and all grades available. These prices covered a period before and after the date of divorcement for each company-operated station. Utilizing this technique, we separated out the effects of deregulation, crude oil price changes, declining aggregate demand for gasoline, and so on. All that remained was the effect of legal divorcement.

Over the last year, this study has been carefully examined by experts in a variety of fields including professional statisticians at an academic journal, researchers at the American Petroleum Institute, state and national gasoline dealer associations, legislators and governmental research teams. The study has encountered only one significant criticism; a possible bias in the data because all of our information was provided by the oil companies which were affected by divorcement. These companies may have had an incentive to deliberately distort the data to make it appear that divorcement led to higher prices and less consumer service. If companies could successfully create this impression, the critics said, perhaps similar legislation would not be passed elsewhere. Of course, this concern is legitimate. As any economist knows, individuals always have incentives to bias data in their own self interest; oil companies are no exception. In anticipation of this, we had built into the original study a number of checks for possible data bias and, while we found no evidence of any distortions, it was still possible that some incorrect information was given to us. The opportunity to update the original study in the fall of 1982 provided the means to check the accuracy of the original data even further.

New Project Design

The services of Mr. Dan Lundberg, a well known petroleum market price observer, were employed to re-survey the entire sample from the original study. None of the oil companies was notified of the re-survey. Over a three-day period, all the prices at all the pumps from all the stations in the sample were collected along with information on the geographic location of each station and the types of services provided. To further guarantee the integrity of the information, I employed an economist from the University of Delaware to randomly re-survey a portion of the stations surveyed by Mr. Lundberg's survey team. No one, including myself, knew which stations would be checked. The Lundberg data was determined to be completely accurate when compared with the re-survey results.

The new and independently verified data was then analyzed using a statistical technique known as multiple regression analysis. This procedure allows us to account for the effect of a number of variables other than divorcement on the retail price. In this fashion, we were able to detect the effects on retail gas prices of the number of pumps and hoses at each station, credit cards, cash discounts, self and full serve, service bays, convenience stores, and so on.

The first test with the new data was to reproduce our original study with the new information included to see if our original results were still valid. *Our findings confirmed our earlier conclusions. Divorcement legislation in Maryland caused a significant increase in retail gasoline prices* at those stations directly affected by the law and at their nearby competitors. In particular, a typical company-operated station before divorcement was selling regular and unleaded gasoline self-serve for 2.32 cents per gallon less than their local competitors. The same station was selling full-serve gasoline for 2.97 cents per gallon less than their competitors. After divorcement, the newly franchised stations (formerly company-operated) raised their prices on average 3.08 cents per gallon on self-serve and 6.26 cents per gallon on full-serve. During the same period, the local competitor stations increased their prices for regular and unleaded gasoline an average of .86 cents per gallon on self-serve and 3.14 cents per gallon on full-serve. In addition, 11 percent of the stations required to be divorced closed after the legal deadline date of July, 1979. About half of these were still closed at the end of 1982. Furthermore, divorced stations which continued in operation under a new franchise contract, were open 8 hours less per week after divorcement.

Detailed New Project Results

The new data provided two additional tests which are of interest. First, it provided additional price information for the year 1982, beyond that contained in the original study. When we added this new data to our original sample and tested for the effects of divorcement, we found no significant differences from our original conclusion that *legally forced divorcement led to higher retail gasoline prices in Maryland.*

The second test used the exact geographic location of each station to check for the data bias which was mentioned earlier. Now that we knew the address of each station we discovered that in several cases a divorced station reported the prices from a competitor which was either another divorced station or a competitor of another divorced station. What this means is that two different oil companies were reporting prices on the same station. This overlap in reported prices allowed for two independent tests for data bias. The first test used the overlap created when one divorced station reported as a competitor the prices of another divorced station owned by another oil company. When this occurred, we discarded the prices at the first divorced station which were collected by the company which owned it and used instead the prices at that station which were reported by its competitor. If the refiner which owned the divorced station had "cheated" or biased the reported prices it would show up in the new test. The results of this test showed only minor differences from the original results. This suggests that even if we throw out all of the prices at the divorced station which were collected by the refiner which owns that station, and substitute prices collected by their competitors, our results will be the same. *The bottom line is this test revealed no data bias.*

The second test is less subtle and much more direct. When an overlap in data reporting occurred, we plotted the prices at the overlap station. Since we had two refiners reporting prices at the same station, any bias would create a difference in the reported price on any given date. This procedure was followed for each overlapping station. *We found no significant differences in the prices reported and no evidence of any data bias.*

Additional Data Verification

The updated study of the Maryland divorcement experience, summarized herein, provided an external validation of the original study's data base by using a second source for price data not subject to the potential bias to which the oil company data may have been subject. Although the updated study produced substantial assurances of the accuracy of the data, it did not *directly* provide a verification of the accuracy of price data for the period *prior* to the implementation of divorcement.

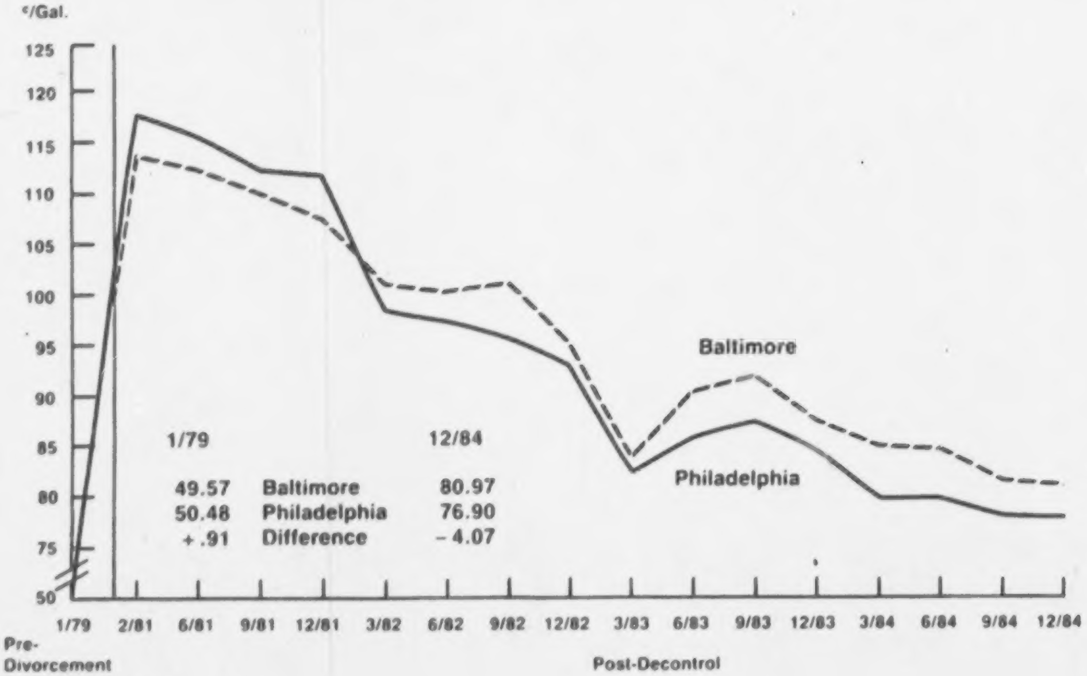
Because of concerns with this lack of a direct verification, an additional check was conducted to provide such a verification. Historic price data obtained from the Lundberg organization was compared to the data used in my original study and the update to that study. Two different Lundberg surveys were purchased — an October, 1978, census of *all* Maryland service stations and their prices; ten Baltimore price surveys distributed over the period July, 1977, through October, 1981.

When comparisons were made between the Lundberg prices and the prices originally provided by the oil companies, *no evidence of any bias or cheating in the original data was found*. A total of 352 of the original sample of 600 stations were matched to the October, 1978, Lundberg census. Of these two sets of prices, more than 70 percent matched perfectly. The remainder included errors, but the errors were evenly distributed in both directions, and of minimal magnitude, ruling out any bias. Forty-one of the original 600 stations were included in the regular Lundberg Baltimore price surveys. Lundberg's prices for each of the 41 stations were compared with the original price data provided by the oil companies. These comparisons were conducted in 10 separate months during the period July, 1977, through October, 1981. In all, a total of 410 price pairings were compared. *All* comparisons were within acceptable limits.

These two checks upon the pre-divorcement price data provide even stronger evidence that no bias or cheating is contained in the data. When combined with earlier data verification, it is clear that the findings of both the original Maryland study and the update to that study are based upon accurate, non-biased information.

Exhibit B

Self Service Leaded Regular Gasoline
Industry Retail Pump Prices Excluding Taxes
Since Maryland Divorcement/Uniform Pricing Legislation
Baltimore Metro Vs. Philadelphia Metro

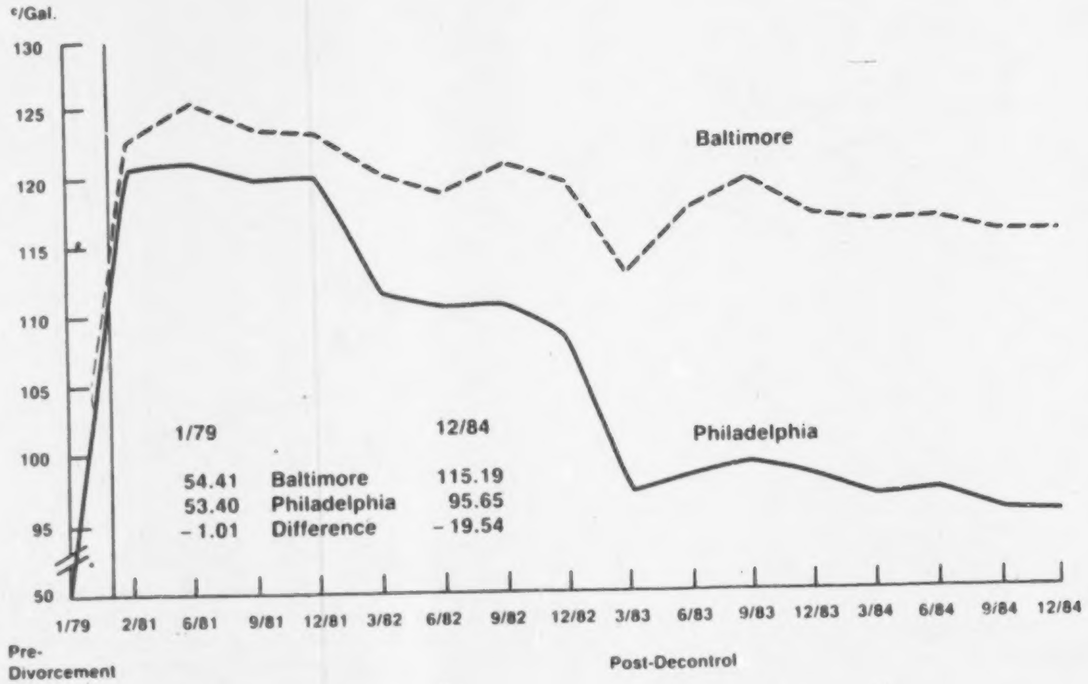


1/79		12/84
49.57	Baltimore	80.97
50.48	Philadelphia	76.90
+.91	Difference	-4.07

Source: Lundberg Price Surveys

Exhibit B

Full Service Leaded Regular Gasoline
Industry Retail Pump Prices Excluding Taxes
Since Maryland Divorcement/Uniform Pricing Legislation
Baltimore Metro Vs. Philadelphia Metro

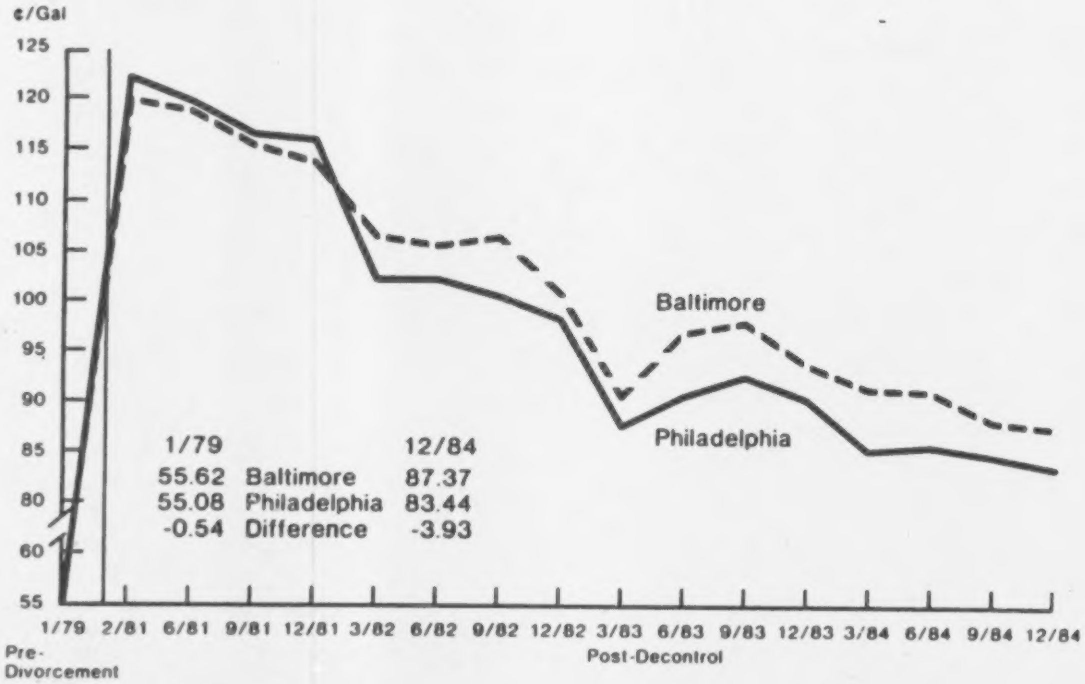


1/79		12/84
54.41	Baltimore	115.19
53.40	Philadelphia	95.65
-1.01	Difference	-19.54

Source: Lundberg Price Surveys

Exhibit B

Self Service Unleaded Regular Gasoline
Industry Retail Pump Prices Excluding Taxes
Since Maryland Divorcement/Uniform Pricing Legislation
Baltimore Metro vs. Philadelphia Metro

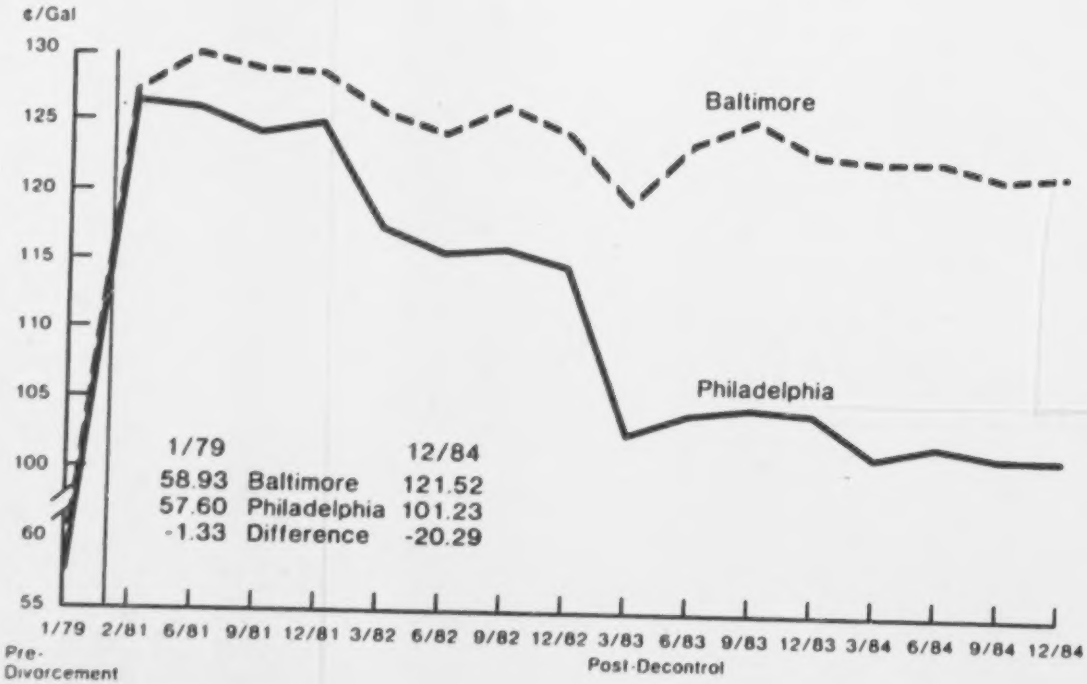


1/79		12/84
55.62	Baltimore	87.37
55.08	Philadelphia	83.44
-0.54	Difference	-3.93

Source: Lundberg Price Surveys

Exhibit B

Full Service Unleaded Regular Gasoline
Industry Retail Pump Prices Excluding Taxes
Since Maryland Divorcement/Uniform Pricing Legislation
Baltimore Metro vs. Philadelphia Metro



Source Lundberg Price Surveys

STROM THURMOND, SOUTH CAROLINA, CHAIRMAN
CHARLES McC. MATHIAS, Jr., MARYLAND
PAUL LAXALT, NEVADA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
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PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS
DENNIS W. SHEDD, CHIEF COUNSEL AND STAFF DIRECTOR
DIANA L. WATERMAN, GENERAL COUNSEL
DEBORAH G. BERNSTEIN, CHIEF CLERK
MARK H. GITENSTEIN, MINORITY CHIEF COUNSEL

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510

October 15, 1985

Mr. James Kowal
ARCO Petroleum Products Company
515 South Flower Street - Room 2001
Los Angeles, California 90071

Dear Mr. Kowal:

As a follow-up to the Committee's hearing on October 9, 1985 concerning S. 1140, the Motor Fuel Sales Competition Improvement Act of 1985, I would appreciate your written responses to the enclosed questions on behalf of Senator Arlen Specter. Please return your answers to the Committee not later than the close of business on Wednesday, October 30, 1985. If you have any questions, please contact Ken Starling at (202) 224-8061.

With kindest regards and best wishes,

Sincerely,

Strom Thurmond

Strom Thurmond
Chairman

ST:jvx
Enclosure

SENATOR SPECTER

QUESTIONS--S. 1140, the Motor Fuels Competition Act

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1. How many stations are owned and operated by the 20 largest oil refiners? What percentage does this represent? What were the comparable figures in 1970, 1975, and 1980?

2. What is evidence that refiners engage in predatory pricing of gasoline re independent dealers? Isn't this already illegal under existing law?

3. What has been the effect of permitting dealers to purchase a certain percentage of their requirements on the "open market," where it has been required pursuant to settlement agreements? Is there any evidence of confusion among consumers as to the source of the product they are buying?

ARCO Petroleum Products Company
515 South Flower Street
Los Angeles, California 90071
Telephone 213 486 2543

J. D. Kowal
Vice President
Wholesale Marketing

October 29, 1985

The Honorable Senator Strom Thurmond
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Thurmond:

Following is my Company's response to Senator Specter's questions as outlined in your memo of October 15, 1985:

#1 The number of stations and the number of company-operated stations for the years 1975 & 1980 are for 15 majors and are based on data from the Department of Energy and Dan Lundberg, a recognized authority in the Petroleum industry. The 1984 data includes a 16th company - Sohio, which had 1200 company operations.

	1975	1980	1984
Total Stations	240,100*	200,894*	210,875**
Company-operated	6,429***	5,764***	7,016**
%	2.68%	2.87%	3.33%

Sources
- * Lundberg Newsletter dated October 8, 1982
- ** Lundberg Newsletter dated July 6, 1984
- *** Refiner-supplied Station Data from the DOE, Petroleum Market Shares

I was unable to locate comparable data for 1970.

In the July 19, 1985, Lundberg newsletter, the number of company-operated stations has been revised to 6,975. However, no revision was made to the total number of stations.

#2 While I am unable to address this question for the other major oil companies, I can assure you that ARCO Petroleum Products Company does not engage in predatory pricing of gasoline against our independent dealers. ARCO uses price zones to determine gasoline pricing. Zones are designed to represent natural customer grouping and most commonly involve distances, traffic patterns, and natural barriers such as rivers, hills, limited access highways or similar barriers. It is important to note that net prices are the same for all Retail Dealers within a particular price zone. Senator Specter is indeed correct when he states that predatory pricing is already illegal under existing law. The Sherman Anti-Trust Bill, the Robinson Patman Act, and the Petroleum Marketing Practices Act are all designed to protect the dealer.

#3 Once again, my comments will be restricted to experiences I have observed at ARCO Petroleum Products Company. To my knowledge, we have not had a single dealer put in a different supplier's product as a result of the "Bogosian" settlement. I can only assume that individual dealers have surveyed their own situations and have determined that it would not be in their best interests to offer an additional brand of gasoline to their customers.

Of importance here is the fact that tens of thousands of dealers own their own property or lease it from a third party non-supplier. They obviously can market any way they want to and almost invariably elect to go with one brand because they know customers are not responsive to mix brand marketing.

I trust these responses adequately address Senator Specter's questions.

Yours very truly,

J. D. Kowal

J. D. Kowal

JPA/las

Senator Metzenbaum. I want to say to you, Mr. Kowal, I am not going to debate the validity of some of the statements you have made, but I want you to know that my silence is not to indicate agreement.

Mr. Kowal. I accept that, sir.

Senator Metzenbaum. You make the point what great opportunities the independent dealer has. He can bring in an outside product; he can do so many other things. The dealers who have been squeezed out of business—at least they think they have been squeezed out of business, and maybe the perception is greater than the reality—they do not feel that way about it.

The man who testified before from Louisiana seemed to be a pretty knowledgeable fellow. He seemed to have been part of the management team and then no longer is there.

We have a rollcall. I think I can start with the next panel before we go to that. In conclusion, I want to say to you, Mr. Nicholson, that as I sat here I thought it was sort of ironic that here you are testifying against these dealers being given what I consider an opportunity to compete freely in our economic system and our claiming that our laws ought to give them some protection in that respect.

And I think it is fair to say—and you are opposed to that—it is fair to say that hearings that I conducted as the chairman of the antitrust committee and the prodding that we did of the FTC were major factors in the posture that Marathon is presently in instead of having been a part of Mobil.

I am sure you are aware of that, and I think there is some irony that what was good for the goose yesterday is not quite so good for the gander today.

Mr. Nicholson. Well, I am in favor of free competition, Senator Our only difficulty comes in the definition of what that is. But, certainly, one could not say that we are against competition.

Senator Metzenbaum. Well, I did not think you would say that you were.

Mr. Nicholson. Well, you phrased it in a certain way that I wanted to make sure that we agreed that we were all in favor of competition; it was just a question of definition.

Senator Metzenbaum. The flag flies high; it is just a question of which way the wind is blowing that flag. [Laughter.]

Thank you very much.

We will hear from our next panel, and our last panel, consisting of Mr. David Berger, of Berger and Montague, of Philadelphia, who was previously introduced by Senator Specter; Professor John Umbeck, Krannert School of Business, Purdue; and Arthur Price, Administrator of the Maryland Motor Vehicle Fuel Tax Division, of Annapolis.

Gentlemen, at some point I am going to have to recess the hearing in order that I may go over and vote, but we will be happy to hear from you first, Mr. Berger, and I will ask for that machine to be changed.

It is nice to have you with us.

STATEMENTS OF A PANEL CONSISTING OF: DAVID BERGER, BERGER & MONTAGUE, PHILADELPHIA, PA; JOHN UMBECK, PROFESSOR, KRANNERT SCHOOL OF BUSINESS, PURDUE UNIVERSITY, WEST LAFAYETTE, IN; AND ARTHUR E. PRICE, ADMINISTRATOR, MOTOR FUEL INSPECTION AND TESTING PROGRAM, STATE OF MARYLAND, ANNAPOLIS, MD

Mr. **Berger**. Thank you very much, Senator Metzenbaum. There has been some discussion of the famous *Bogosian* case, and I thought I would briefly summarize my statement, which, with your permission, I would like to have incorporated as a part of this record.

Bogosian is a landmark decision. We have heard discussion this morning about the adequacy of the Nation's antitrust laws. Let me tell you and your distinguished committee, Senator Metzenbaum, that I started that case more than 13 years ago.

Where was the Department of Justice in the meantime? Where was the FTC? We went ahead with this litigation. It was scorched earth from the beginning until the end, and it was not until after 13 years of tremendous investigation, interrogatories, depositions, cross-examination, on the eve of trial that we forced a settlement.

Now, I am here today to tell you that any suggestion that gasoline dealers can get the kind of protection they are entitled to or that the public which buys from the gasoline dealers will get that protection just from the existence of the antitrust laws is a fallacy, and *Bogosian* proves that.

Second, I will only address one aspect of this bill, and that is the open supply. One thing we found, Senator, is that the oil companies can live with a non-exclusive provision. It is unquestionably the fact that before *Bogosian*, irrespective of what was stated in the agreements between the oil companies and their lessee dealers, the lessee dealers were forced to buy their entire requirements of gasoline from their suppliers.

Now, what *Bogosian* did, quite apart from the monetary settlement, was to get a decree of the Court of the Eastern District of the United States seated in Philadelphia which requires the oil companies to agree that they will, first, not conspire with respect to provisions of the leases between the oil companies and the dealers; and second—and this is very important because your bill addresses this—they will not require the lessee dealers to buy their entire supply of gasoline from the lessor supplier.

Now, we have heard testimony this morning to the effect that this would cause chaos and havoc. No such thing. I have in front of me—and I will not take the committee's time, but I can certainly supply you with this—the various agreements which we have reached and which are now part of the consent injunction that has been entered in the Eastern District of the U.S. Federal Court in Philadelphia.

They vary, but basically they provide two things. First, they provide the method by which independent dealers, lessee dealers, may, in fact, get gasoline from suppliers other than their lessors.

Second, they provide for reasonable notice, as your bill does now, so that anybody buying from the particular gas station would know that the gas coming from a particular pump is not that of Chevron, ARCO, Shell, or what have you. And they provide the conditions under which the tanks and the pumps can be used.

Now, what I am suggesting——

Senator **Metzenbaum**. Mr. Berger, I am going to interrupt you because we have a system that if I do not get there for the rollcall, I just do not make it and I am going to have to leave.

Mr. **Berger**. I appreciate it.

Senator **Metzenbaum**. I am going to say that we will be happy to include in the record as many of those settlement agreements as you have available.

[Settlement agreements follow:]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN, *et al.*, : CIVIL CLASS ACTIONS
Class Representatives, : —
v. :
GULF OIL CORPORATION, *et al.*, : NOS. 71-1137
: 71-2543
Defendants. :

SETTLEMENT AGREEMENT

(MOBIL)

This Settlement Agreement is made this 21st day of September, 1984, by and between Mobil Oil Corporation (Mobil Oil Corporation, its predecessors, subsidiaries, divisions, affiliates, and its parent corporation being hereinafter referred to as "Mobil") and named plaintiffs Paul J. Bogosian and Louis J. Parisi, both individually and on behalf of: (a) all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed timely and valid elections to be excluded from the class, and (b) all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions. Such members of both classes, including the named plaintiffs, are hereinafter collectively referred to as "plaintiffs".

WHEREAS, the two above-captioned actions have been instituted against Amerada Hess Corporation; Amoco Oil Company; Atlantic Richfield Company; BP Oil Inc.; Chevron Oil Company; Cities Service Company; Exxon Corporation; Getty Oil Company, Gulf Oil Corporation; Mobil Oil Corporation; Phillips Petroleum Company; Shell Oil Company; Sun Oil Company; Texaco Inc.; and Union Oil Company of California ("defendants"), alleging a conspiracy or conspiracies in violation of Section 1 of the Sherman Act; and

WHEREAS, Mobil has answered the complaints and amended complaints and has raised defenses and affirmative defenses to all allegations; and

WHEREAS, Mobil asserts that its practices, policies and procedures are lawful and reasonable, and Mobil denies that is has (or had) entered into any conspiracy or (conspiracies) and denies that it has violated the antitrust laws; and

WHEREAS, Mobil since at least 1937 has permitted Mobil lessee dealers to install additional tank(s) and pump(s) not bearing the Mobil trademark for purposes of dispensing non-Mobil motor fuel; and

WHEREAS, the parties hereto wish to set forth specific practices and procedures for future implementation of this long-standing Mobil policy; and

WHEREAS, the parties hereto desire amicably to resolve their disputes without the necessity for a lengthy and costly trial;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. As used herein, the following definitions shall apply:

(a) "Lessee dealer(s)" shall mean each person or entity within the United States who has leased a gasoline service station from a defendant herein for the sale at retail of motor fuel under his lessor's trademark and has purchased motor fuels from the lessor for sale at retail under any of the lessor's trademarks at any time from May 11, 1967 to the present.

(b) "Mobil lessee dealer(s)" shall mean a lessee dealer within the United States who has leased a gasoline service station from Mobil for the sale at retail of motor fuel and purchased motor fuel from Mobil for sale at retail under Mobil's trademark(s) at any time from May 11, 1967 to the present. The term shall not include the dealer at any service station thereafter sold by Mobil.

(c) "Mobil trademark(s)" shall mean any source marks, trademarks, trade names, logos, emblems, dispensing pump designs, color combinations associated with Mobil motor fuels, brands or brand names now owned or used, or which in the future may be owned or used, by Mobil in connection with sale of Mobil motor fuel.

(d) "Mobil motor fuel(s)" shall mean any gasoline or other motor fuel sold or provided by Mobil to a Mobil lessee dealer as Mobil branded gasoline or motor fuel. As between Mobil and Mobil lessee dealers, Mobil shall be the sole determiner of the specifications, grades, types and sources of "Mobil motor fuel".

(e) "Non Mobil motor fuel" shall mean any motor fuel not sold or provided by Mobil to a Mobil lessee dealer as Mobil motor fuel.

(f) "United States" shall mean the 50 states and the District of Columbia.

2. The provisions of this Settlement Agreement applicable to and binding upon Mobil shall remain in effect for five (5) years from the date hereof and shall apply only to the operations of Mobil, if any, in the United States. Following said five (5) year period, Mobil shall have

no further obligations pursuant to this Settlement Agreement or pursuant to the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement.

3. Mobil agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of motor fuel which Mobil lessee dealers may offer for sale or with respect to Mobil's contractual and lease provisions with Mobil lessee dealers. The foregoing agreement does not constitute an admission or evidence of any past or present violation of law by Mobil and shall not be construed as an admission or evidence of any past or present violation of law by Mobil.

4. Plaintiffs agree that, in light of the terms and conditions of paragraphs 1 through 3 and 5 through 9 and 13 of the Settlement Agreement and paragraphs 2 and 6 through 15 of the Consent Decree (Exhibit A hereto), Mobil's policies, practices and procedures with respect to Mobil lessee dealers and other lessee dealers do not violate the antitrust and trademark laws of the United States or any state; and that if Mobil complies with the terms of the Settlement Agreement and Consent Decree, Mobil's practices, policies and procedures as provided for therein do not violate the antitrust or trademark laws of the United States or any state. If there is compliance, plaintiffs shall not assert that Mobil's policies, practices and procedures with respect to Mobil lessee dealers or lessee dealers violate the antitrust or trademark laws of the United States or any state or are or will be grounds for any claims thereunder against Mobil.

5. Mobil further agrees that the express terms of its leases and motor fuel sales contracts with Mobil lessee dealers, whether taken individually or together, do not and shall not require any Mobil lessee dealer to purchase his entire requirement of motor fuel from Mobil. Nothing in this Settlement Agreement is intended to deny Mobil the continued right:

(a) to protect Mobil's trademarks by, *inter alia*, requiring that any motor fuel sold under Mobil trademarks be motor fuel supplied by Mobil and requiring the Mobil lessee dealers to adhere strictly to the trademark protection provision of the lease and supply agreements entered into with Mobil, as well as any guidelines issued by Mobil to Mobil lessee dealers from time to time relating to the protection of Mobil's trademarks; and

(b) to be indemnified and held harmless by the Mobil lessee dealer against all claims of any kind for injury or loss resulting from or arising out of the Mobil lessee dealer's handling, storage, dispensing and/or sale of any non-Mobil motor fuel at the leased premises. In this regard, as a condition to any alteration, as provided in paragraph 6 below, any Mobil lessee dealer who exercises his right to install additional tank(s) and pump(s) shall be required to sign an indemnity letter acknowledging these responsibilities.

6. For purposes of complying with paragraph 5, above, Mobil shall continue to permit a Mobil lessee dealer the opportunity to install additional pump(s) and tank(s), in accordance with the procedures and limitations prescribed in this Settlement Agreement. In this regard, *inter alia:*

(a) Mobil shall have the right to require prominent display of Mobil signs at Mobil lessee dealer stations and to restrict the size and the location of any signs displayed at the leased premises which advertise the sale of non-Mobil motor fuels and to require that the Mobil lessee dealer adequately display signs to indicate clearly that such motor fuels are other than Mobil motor fuel, including, but not limited to, signs such as those specified in paragraph 7(c) below.

(b) Mobil shall not have any responsibility to comply with applicable statutes and regulations governing the storage, handling, sale, certification, grade and price posting for non-Mobil motor fuels dispensed by Mobil lessee dealers.

(c) Mobil reserves the right to have its representatives, upon reasonable notice and at time acceptable to the Mobil lessee dealer, audit the Mobil lessee dealer's books and records relating to the purchase and distribution of gasolines and distillates, to inspect the Mobil lessee dealer's locations and to test gasolines and distillates in the possession or control of the Mobil lessee dealer for the purpose of determining compliance with the provisions of the requirements concerning sales of non-Mobil motor fuels.

7. Mobil may reasonably withhold its consent to the installation by a Mobil lessee dealer of additional tank(s) and pump(s) at his leased service station for the purpose of the sale of non-Mobil motor fuel (and remain nevertheless in compliance with the Settlement Agreement) or Mobil may invoke the provisions of paragraph 13 hereof unless the Mobil lessee dealer complies with the following procedures:

(a) The Mobil lessee dealer must maintain and continue to dispense a representative amount of Mobil motor fuels for resale to the public. A "representative amount of Mobil motor fuels" means a sufficient amount of each brand and type of motor fuel offered to the dealer by Mobil so that the Mobil lessee dealer shall always have each grade and type available for resale and shall continue to sell Mobil motor fuels to the public through pumps bearing Mobil's brand identification. As permitted by law, nothing contained herein shall: (i) prevent Mobil from enforcing minimum volume requirements in its supply contracts, which requirements do not presently exceed 50% of the station's estimated total monthly or annual gallonage; or (ii) prevent Mobil from making single deliveries of motor fuels in standard delivery volumes, as defined by Mobil.

(b) The Mobil lessee dealer may not remove, alter, obstruct or debrand any of Mobil's brand identification on the premises.

(c) In order to clearly avoid any confusion or misunderstanding by the public as to the source, certification, sponsorship, or approval of such motor fuels, any pump or container utilized in the marketing of non-Mobil motor fuels shall display thereon a sign or label notifying the public that motor fuels supplied therefrom are not products of Mobil. Such sign or label must be clearly visible to the public, must be at least eight inches by ten inches in size, and must carry the following statement in type at least three inches in height:

THE PRODUCT SOLD FROM THIS PUMP IS NOT SUPPLIED BY MOBIL OIL CORPORATION

(d) Any installation of pump(s) and tank(s) to dispense non-Mobil motor fuel shall be at the sole cost and expense of the Mobil lessee dealer and pursuant to plans and specifications previously approved in writing by Mobil. Mobil shall not unreasonably withhold its consent to such plans and specifications, but Mobil may require that the proposed installation be workmanlike, timely and structurally sound, comply with all applicable laws and regulations, and not unreasonably interfere with the use of Mobil's existing facilities and access to pumps dispensing Mobil branded motor fuel.

(e) The Mobil lessee dealer at his sole expense shall obtain and maintain at all times during the installation work related to such additional tank(s) and pump(s) (i) workmen's compensation insurance in statutory limits for all eligible workmen engaged in the installation work, (ii) public liability insurance, in which Mobil shall be among the named insureds, for bodily injury and death, and property damage with the coverage limits that each Mobil lessee dealer is then required to carry, (iii) builder's all risk insurance in an amount equal to the value of the completed installation, and (iv) if required by Mobil, a completion bond and/or a payment and performance bond for the installation work with a surety or sureties satisfactory to Mobil, guaranteeing completion of the installation work as described by the approved plans and specifications within forty-five days of the commencement of the actual work (acts of God excepted), providing for the removal of all work and the restoration of the property to its pre-existing state within such forty-five day period should the Mobil lessee dealer abandon or be unable to complete the installation work, and providing for the removal of or indemnity against liens or claims arising from the installation work. The Mobil lessee dealer shall submit to Mobil evidence of such coverage and bond, if required, prior to commencing the installation work.

(f) Such additional pump(s) and tank(s) shall be maintained by the Mobil lessee dealer at the Mobil lessee dealer's sole cost and expense.

(g) Without limitation, the Mobil lessee dealer shall pay or reimburse Mobil for all utility charges, municipal fees, any increases in real or personal property taxes and any other increases in costs to Mobil specifically attributable to the Mobil lessee dealer's installation, use, maintenance and/or sales of product from such additional tank(s) and pump(s).

(h) In the event of any leak into the environment from such additional pump(s) and/or tank(s), or the use of such additional pump(s) and/or tank(s) in a manner which is otherwise unsafe or prohibited by any applicable laws or regulations, the Mobil lessee dealer shall immediately cease using such additional pump(s) and tank(s) and shall immediately, at his sole cost and expense, correct all such problems. Upon such correction, the Mobil lessee dealer may resume using such additional tank(s) and pump(s).

(i) In using and maintaining the additional tank(s) and pump(s), the Mobil lessee dealer shall comply with all applicable laws and regulations and, *inter alia*, shall be responsible for any necessary octane posting changes on his additional pump(s), and shall ensure that the gasoline sold to the public from such pump(s) conforms to any governmental lead content requirements.

(j) The Mobil lessee dealer will be solely responsible and liable and Mobil shall in no way be responsible or liable for any claims or violations arising out of the Mobil lessee dealer's installation, use, maintenance and/or sales of product from such additional tank(s) and pump(s). Furthermore, the installation, use, maintenance and/or sales of product from such tank(s) and pump(s) shall not be deemed to create the relationship of employee and employer, or of partners or joint venturers between Mobil and any Mobil leasee dealer.

(k) The Mobil lessee dealer shall, at his sole cost and expense, include the additional pump(s) and tank(s) within the insurance coverage that each Mobil lessee dealer may be required to carry, including but not limited to pollution liability and environmental impairment liability insurance, general liability and fire and extended coverage in amounts to be reasonably specified by Mobil.

(l) The Mobil lessee dealer may not utilize the Mobil credit card, the Mobil credit card system or the Mobil Electronic Point of Sale System for sales of non-Mobil motor fuels. In credit transactions involving the sales of non-Mobil motor fuels, the Mobil lessee dealer shall use a credit card invoice which does not display any Mobil trademark, trade name, brand or other Mobil identification. Likewise, the Mobil lessee dealer, in soliciting business or billing for non-Mobil motor fuels, shall not use any other invoice, stationery, or other Mobil identified documents which could have the effect of confusion to the customer as to the source or sponsorship of the product sold.

(m) The Mobil lessee dealer shall not use any storage tank, pump, or container which has contained non-Mobil branded motor fuel for the storage or dispensing of Mobil branded motor fuel under the Mobil trademark without the consent of Mobil, which shall not be unreasonably withheld, provided, however, that Mobil may elect not to modify the maximum purchase provisions contained in the Mobil lessee dealer's supply agreement. In the event that Mobil gives its consent under this subparagraph (m), any such pump or container shall be completely purged of all non-Mobil branded motor fuels to the satisfaction of a Mobil representative at the Mobil lessee dealer's sole cost and expense.

(n) If Mobil does not own the service station premises in fee but leases the land, the station or both from a third-party, any installation and/or operation by the Mobil lessee dealer of such additional pump(s) and tank(s) shall be subject to the Mobil lessee dealer obtaining all necessary consents which may be required by Mobil's lessor, and the Mobil lessee dealer shall remove such tank(s) and pump(s) prior to the expiration of the third-party lease with Mobil, if required by Mobil's lessor. In the event that Mobil's rent to the lessor or from the Mobil lessee dealer is based upon gallonage sold at the service station, the Mobil lessee dealer shall also execute any required verification as to sales of non-Mobil motor fuel.

(o) To the extent a Mobil lessee dealer is permitted by law or contract and in fact does devise, bequeath, sublet, assign or otherwise transfer his entire leasehold interest, he must also transfer his ownership interest in any such additional tank(s) and pump(s), provided that any person to whom such additional tank(s) and pump(s) are so transferred shall accept, agree with and be subject to all of the requirements, procedures and provisions set forth herein.

(p) The Mobil lessee dealer shall comply with Mobil's present requirements to protect Mobil's trademarks and shall take all future actions required by Mobil to protect Mobil's trademarks so long as said future actions are not prohibited by law.

8. Upon the installation of additional tank(s) and pump(s) which enable a Mobil lessee dealer to sell non-Mobil motor fuel at the leased premises, Mobil shall have the right to charge the lessee dealer additional rent determined in good faith and in the ordinary course of business on the same basis as Mobil motor fuel constitutes a factor in determining rent at the station.

9. It is agreed among the parties to this Settlement Agreement that Mobil's currently effective leases and supply agreements may be amended at Mobil's discretion so long as such amendments do not conflict with the provisions or requirements of this Settlement Agreement.

10. The named plaintiffs and all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed valid and timely elections to be excluded from the class (hereinafter collectively referred to in this paragraph as the ''releasing parties'') hereby release and forever discharge Mobil and its past and present officers, directors, agents and employees (hereinafter collectively referred to as ''the released parties'') from any and all liabilities, claims, indebtedness and causes of action, whether at law or in equity, arising under the antitrust or trademark laws of the United States or of any state, including without limitation, any claim set forth in the Complaint, Amended Complaints, Responses to Interrogatories, Plaintiffs' Preliminary Statement of Claim, plaintiffs' pretrial memoranda and/or transcripts or elsewhere and the releasing parties (and each of them) shall be barred from prosecuting any claims against the released parties, or any one of them, which were alleged or could have been alleged by the releasing parties, or any one of them, against the released parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the Complaint, Amended Complaints, Responses to Interrogatories, Plaintiffs' Preliminary Statement of Claim, plaintiffs' pretrial memoranda and/or transcripts or elsewhere up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraphs 18 and 22 are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Mobil and the other released parties expressly released in this paragraph.

11. The named plaintiffs and all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions (hereinafter collectively referred to in this paragraph as the ''releasing parties'') hereby release and forever discharge Mobil and its past and present officers, directors, agents and employees (hereinafter collectively referred to as ''the released parties'') from any and all liabilities, claims, and causes of action for injunctive or declaratory relief arising under the antitrust or trademark laws of the United States or of any state, including without limitation, any claims for injunctive or declaratory relief set forth in the Complaint, Amended Complaints, Responses to Interrogatories, Plaintiffs' Preliminary Statement of Claim, plaintiffs' pretrial memoranda and/or transcripts or elsewhere and the releasing parties (and each of them) shall be barred from prosecuting any claims for injunctive or declaratory relief against the released parties, or any of them, which were alleged or could have been alleged by the releasing parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim for injunctive or declaratory relief set forth in the Complaint, Amended Complaints, Responses to Interrogatories, Plaintiffs' Preliminary Statement of Claim, plaintiffs' pretrial memoranda and/or transcripts or elsewhere up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraphs 18 and 22 are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Mobil and the other released parties expressly released in this paragraph.

12. This Settlement Agreement has been executed for the respective parties hereto, by counsel for plaintiffs and by counsel for Mobil, and without trial or adjudication of any issue of fact or law raised by the complaints and answers, and shall not be considered as evidence in this litigation on behalf of any non-settling defendant.

13. Mobil shall have the right, consistent with applicable statutes and upon written notice given in accordance with applicable statute or regulation, to terminate the lease and contract of any Mobil lessee dealer who fails to observe and comply with the conditions, including the definitions, set forth in this Settlement Agreement. To this end, these conditions and definitions shall be applicable as of the date of the Order and Consent Decree, Exhibit A hereto, to all present contracts and leases with plaintiffs and may be incorporated by Mobil in any future contracts between Mobil and its lessee dealers during the life of this Settlement Agreement. The foregoing right shall not exclude, impair or limit any other right Mobil may have to terminate or nonrenew any of its contracts or leases with Mobil lessee dealers consistent with applicable law.

14. It is the intention of the parties hereto that this Settlement Agreement will not only end the present litigation but also will prevent future litigation by lessee dealers (including Mobil lessee dealers) against Mobil arising out of Mobil's present marketing policies, practices and procedures.

15. Upon execution of this Settlement Agreement, Mobil shall pay to counsel for plaintiffs the total sum of $2,657,500.00 (''Settlement Sum''). The Settlement Sum shall be held in escrow by counsel for plaintiffs pursuant to order of the Court and shall be placed in an interest-bearing account. The Settlement Sum shall be the only amount Mobil is required to pay pursuant to this Settlement Agreement or pursuant to any judgment(s) subsequently entered in this litigation. Mobil shall not be liable for any costs or attorneys' fees, expenses, escrow agents' fees or expenses, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum.

16. Plaintiffs may, subject to the approval of the Court, use a maximum of 3% of the Settlement Sum for purposes of paying the costs of giving notice to the classes of the settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 24 of this Settlement Agreement, any portion of the Settlement Sum actually disbursed to pay such costs of notice shall not be refundable to Mobil.

17. Mobil and plaintiffs agree that Mobil shall not have any responsibility for any allocation of the Settlement Sum among members of the class.

18. The parties agree that, subject to the provisions of paragraphs 10 and 11 as to non-settling defendants, the above-captioned actions shall be dismissed with prejudice as to Mobil. Final judgment in favor of Mobil as set forth in Exhibit A shall be entered by the District Court in both actions at the time of final approval of this Settlement Agreement.

19. The proposed notice to the classes advising the classes of this Settlement Agreement shall be submitted to counsel for Mobil for review and approval prior to submission of the notice to the District Court. In the event of any dispute between counsel for Mobil and counsel for plaintiffs as to the form or substance of the notice, the District Court will resolve the dispute. Plaintiffs and Mobil shall apply to the Court for an Order requiring all defendants (including Sun and Getty) to provide plaintiffs with lists of their current lessee dealers. Mobil shall not pay the costs of obtaining or preparing any such lists of current lessee dealers, except that Mobil shall supply a list of current Mobil lessee dealers (or the best information available) at its sole cost and expense.

20. Plaintiffs agree that in consideration for the payment by Mobil of the Settlement Sum set forth in paragraph 15 of this Settlement Agreement, if plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of said final judgment (or judgments) shall be reduced by the greater of:

(a) the amount of the Settlement Sum; or

(b) an amount equal to 10.63% of the dollar amount of said final judgment (or judgments).

It is agreed that this and only this paragraph 20 is provided for the benefit of all defendants (other than Sun and Getty), and any defendant (other than Sun or Getty) may enforce this and only this paragraph 20 against plaintiffs, provided, however, that Mobil is not so limited to rights under this paragraph.

21. With regard to documents produced by Mobil or plaintiffs in the course of this litigation, the following shall be applicable:

(a) Immediately after the conclusion of this litigation, plaintiffs shall return to Mobil all copies of all documents produced by Mobil to plaintiffs (including copies of documents in the possession of plaintiffs' experts or any other person or entity) except those containing plaintiffs' counsels' work product or plaintiffs' experts' work product. ''Return'' shall mean making said documents available to Mobil at the office of Berger & Montague. Plaintiffs' counsel shall, at the conclusion of this litigation, also immediately destroy any and all Mobil documents containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any documents produced by Mobil. In addition, at the conclusion of this litigation, plaintiffs and plaintiffs' counsel shall immediately comply with the present provisions of paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph 15 of Class Action Order No. 67 whether or not such Class Action Orders are subsequently vacated or amended.

(b) Immediately after conclusion of this litigation, Mobil shall return to counsel for plaintiffs all copies of all documents in Mobil's or Mobil's counsel's possession which were produced in discovery proceedings in this litigation: (i) by either named plaintiff; (ii) by plaintiffs' counsel; (iii) by any trial witness designated by plaintiffs; or (iv) by any person or entity incident to the deposition of Kenneth Black (including copies of documents in the possession of Mobil's experts or any other person or entity and including all copies of all such documents marked as deposition exhibits) except those containing Mobil's counsel's work product or Mobil's expert's work product. Mobil shall also return to counsel for Sun the documents produced by Sun at the depositions of Messrs. Burton and Comly. ''Return'' shall mean making said documents available at the offices of Donovan Leisure Newton & Irvine, New York, New York. Mobil's counsel shall at the conclusion of this litigation, also immediately destroy any and all documents in their possession produced in discovery proceedings in this litigation: (i) by either named plaintiff; (ii) by plaintiffs' counsel; (iii) by any trial witness designated by plaintiffs; (iv) by any person or entity incident to the deposition of Kenneth Black; or (v) by counsel for Sun at the Comly or Burton depositions containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any such documents. Mobil and Mobil's counsel shall certify in writing to plaintiffs' counsel that Mobil and Mobil's counsel have complied with this paragraph.

22. This Settlement Agreement is expressly conditioned upon, *inter alia*, the Court entering an Order and Consent Decree in the form set forth in Exhibit A to this Settlement Agreement.

23. Unless a subsequent change in circumstances occurs which has material adverse effect on plaintiffs' claims against any non-settling defendant, plaintiffs will not settle with any non-settling defendant, on terms substantially more favorable to that defendant than to Mobil unless said more favorable terms are also immediately offered to Mobil by plaintiffs. If Mobil accepts said offer, this Settlement Agreement (including, if necessary, Exhibit A) will be amended accordingly. If the parties cannot agree whether the terms offered to a non-settling defendant are ''substantially more favorable to that defendant than to Mobil,'' the dispute will be submitted to the District Court for binding resolution.

(a) ''Non-settling defendant'', as used herein, is limited to the following defendants:

American Oil Company
Atlantic Richfield Company
BP Oil Inc.
Chevron, U.S.A.
Exxon Corporation
Gulf Oil Corporation

Phillips Petroleum Company
Shell Oil Company
Texaco, Inc.
Union Oil Company of California

(b) It is understood that with respect to a monetary settlement, plaintiffs will not, unless plaintiffs follow the procedures set forth in the second sentence of this paragraph 23(b), accept in settlement less than that settling defendant's share under the Defendants' Sharing Agreement as applied to a total sum of $25 million, and that such a monetary settlement satisfies the intent of this paragraph 23. If plaintiffs do accept a lesser sum than that resulting from the formula described in the preceding sentence, plaintiffs will immediately refund to Mobil a pro rata portion of the Settlement Sum paid by Mobil.

24. In the event that the Court denies complete approval of this Settlement Agreement or completely approves it but is reversed or modified on appeal, or should the Order and Consent Decree contemplated hereby not be made in the exact form set forth in Exhibit A or be made but be reversed or modified on appeal, then this entire Settlement Agreement shall terminate unless all parties promptly agree to proceed with this Settlement Agreement, Order and/or Consent Decree as proposed to be modified by the District Court or the Appellate Court. In the event this Settlement Agreement is terminated pursuant to this paragraph, the Settlement Sum (less a maximum of 3% of said Sum, if previously disbursed incident to giving notice to the classes), plus any accrued interest, shall be immediately returned to Mobil. In the event that the Court grants approval and enters the Order and Consent Decree in the form attached as Exhibit A and in the event that the Order and Consent Decree (Exhibit A) becomes final and non-appealable, then the Settlement Sum (less any disbursements made incident to giving notice to the classes) may be removed from escrow by counsel for plaintiffs subject to further Order of the Court.

25. This Settlement Agreement contains a full, complete and integrated statement of each and every term and provision agreed to by and among the parties hereto. No term or provision in any settlement agreement entered into between plaintiffs and any other defendant with respect to this litigation shall affect this Settlement Agreement (except as provided in paragraph 23 above) or the interpretation thereof. The terms and provisions of this Settlement Agreement are not severable. This Settlement Agreement shall not be orally modified in any respect, and can be modified only by the written agreement of the parties hereto.

[SIGNATURES OMITTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN, *et al.*, : CIVIL CLASS ACTION
Class Representatives, :
v. :
GULF OIL CORPORATION, *et al.*, : NOS. 71-1137
: 71-2543
Defendants. :

SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND BP OIL INC.

This Settlement Agreement is made the 21st day of September, 1984 by and between BP Oil Inc. (referred to in this Settlement Agreement as "BP") and named plaintiffs Paul J. Bogosian and Louis J. Parisi, both individually and on behalf of (a) all members of the Rule 23(b)(3) class in these consolidated actions as defined in Class Action Order No. 1 who have not made timely and valid elections to be excluded from the class, and (b) all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in these actions. Those members of both classes, including the named plaintiffs, are collectively referred to in this Settlement Agreement as "plaintiffs."

WHEREAS, these actions have been instituted against Amerada Hess Corporation, Amoco Oil Company, Atlantic Richfield Company, BP Oil Inc., Chevron Oil Company, Cities Services Company, Exxon Corporation, Getty Oil Company, Gulf Oil Corporation, Mobil Oil Corporation, Phillips Petroleum Company, Shell Oil Company, Sun Oil Company, Texaco Inc. and Union Oil Company of California ("defendants"), alleging a conspiracy or conspiracies in violation of Section 1 of the Sherman Act;

WHEREAS, BP has answered the amended complaints and has raised defenses and affirmative defenses to all allegations;

WHEREAS, it is BP's position that its practices, policies and procedures are lawful and reasonable, and BP denies that it has entered into any conspiracy and denies that it has violated the antitrust laws; and

WHEREAS, the parties to this agreement desire amicably to resolve their disputes without the necessity for a lengthy and costly trial,

NOW, THEREFORE, the parties to this agreement, intending to be legally bound, agree as follows:

1. The provisions of this Settlement Agreement applicable to and binding on BP shall remain in effect for five years from the date of the agreement and shall apply to the operations of BP only in the fifty states of the United States and in the District of Columbia. Following that five-year period, BP shall have no further obligations pursuant to this Settlement Agreement or pursuant to the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement.

2. BP agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of motor fuel that BP lessee dealers may offer for sale or with respect to BP's contractual and lease provisions with BP lessee dealers.

3. BP further agrees that the express terms of its leases and motor fuel sales contracts with BP lessee dealers, whether taken individually or together, do not and shall not require any BP lessee dealer to purchase his entire requirements of motor fuels from BP. Nothing in this Settlement Agreement is intended to deny BP the continued rights:

(a) to make deliveries of motor fuels to each BP lessee dealer in minimum delivery quantities, as specified by BP from time to time for lessee dealers generally in the same marketing area;

(b) to require BP lessee dealers to buy and resell a representative quantity of BP motor fuels, as defined in paragraph 6(h), below;

(c) to base the rental paid by a BP lessee dealer on sales of all motor fuels at the leased service station;

(d) to protect BP's trademarks by, *inter alia*, requiring that any motor fuel sold by BP lessee dealers that is non-BP motor fuel not be sold under BP trademarks or as BP motor fuel and to require the BP lessee dealers to adhere strictly to BP's policies for the protection of BP's trademarks; and

(e) to be indemnified and held harmless by a BP lessee dealer against all claims of any kind for injury or loss resulting from or arising out of the BP lessee dealer's handling, storage, dispensing or sale of any non-BP motor fuel at the leased premises.

4. BP may discharge all of its obligations under paragraph 3, above, by providing a BP lessee dealer the opportunity to add additional pumps and tanks, in accordance with the procedures and limitations prescribed in paragraph 5, below, for the handling of non-BP motor fuel.

5. BP shall discharge all of its obligations under paragraph 3, above, by not unreasonably withholding its consent to allow a BP lessee dealer to alter the leased station to install additional pumps and tanks for the purpose of selling non-BP motor fuel. BP may reasonably withhold its consent (and still have met all of its obligations under paragraph 3, above) unless the BP lessee dealer complies with the following procedures:

(a) Any installation of pumps and tanks to dispense non-BP motor fuel shall be at the sole cost and expense of the BP lessee dealer and pursuant to plans and specifications previously approved in writing by BP. BP shall not unreasonably withhold its consent to such plans and specifications, but BP may require that the proposed pumps and tanks be structurally sound, comply with all applicable laws and regulations and not interfere with the use of BP's existing facilities and access to pumps dispensing BP motor fuel. The actual performance of the installation work shall be workmanlike. It is acknowledged, however, that some unavoidable interference with access to pumps dispensing BP motor fuel might occur during the actual performance of the installation work, which interference the BP lessee dealer agrees to keep to a minimum. The BP lessee dealer at his sole expense shall obtain and maintain at all times during the installation work (i) workmen's compensation insurance in statutory limits for all eligible workmen engaged in the installation work, (ii) public liability insurance, in which BP shall be among the named insureds, for bodily injury and death, and property damage with the coverage limits that each BP lessee dealer is then required to carry, (iii) builder's all risk insurance in an amount equal to the value of the completed installation, and (iv) if required by BP a completion bond or a payment and performance bond or both, for the installation work, with a surety or sureties satisfactory to BP, guaranteeing completion of the installation work as described by the installation plans within forty-five days of the commencement of the actual work (acts of God excepted), providing for the removal of all work and the restoration of the property to its preexisting state within that forty-five day period if the BP lessee dealer abandons or is unable to complete the installation work, and providing for the removal of or indemnity against liens or claims arising from the installation work. The BP lessee dealer shall submit to BP evidence of the required coverage and bond, if required, before commencing the installation work. The additional pumps and tanks shall be maintained by the BP lessee dealer at the BP lessee dealer's sole cost and expense. In the event of any leak into the environment from the additional pumps or tanks or the use of the additional pumps or tanks in a manner that is otherwise unsafe or prohibited by applicable law or regulation, the BP lessee dealer shall immediately cease using the additional pumps and tanks and shall immediately, at his sole cost and expense, correct all of the problems. When he has corrected the problems to BP's satisfaction, the BP lessee dealer may resume using the additional pumps and tanks. In using and maintaining the additional pumps and tanks, the BP lessee dealer shall comply with all applicable laws and regulations and shall indemnify and hold BP harmless against all claims of any kind for injury or loss resulting from or arising out of the BP lessee dealer's handling, storage, dispensing or sale of any non-BP motor fuel at the service station. The BP lessee dealer shall, at his sole cost and expense, include the additional pumps and tanks within the insurance coverage that each BP lessee dealer is otherwise required to carry;

(b) If BP does not own the service station premises in fee but leases the land, the station or both from a third party, any installation or operation by the BP lessee dealer of additional pumps and tanks shall be subject to the BP lessee dealer's obtaining all necessary consents that may be required by BP's lessor, and the BP lessee dealer shall remove the pumps and tanks before the expiration of the third-party lease with BP, if required by BP's lessor. In the event that BP's rent to the lessor or from the BP lessee dealer is based on gallonage sold at the service station, the BP lessee dealer shall execute any required verification as to sales of non-BP motor fuels;

(c) The BP lessee dealer shall take all steps now required by BP to protect BP's trademarks and shall take all future steps required by BP to protect BP's trademarks so long as those future steps are not prohibited by law. Specifically, BP shall have the right to restrict the size and the location of any sign displayed at the leased premises that advertises the sale of non-BP motor fuel and to require that the BP lessee dealer adequately display signs to indicate clearly that such motor fuel is other than BP motor fuel. BP shall not have any responsibility to comply with statutes and regulations covering the sale, certification, grade or price posting of any non-BP motor fuel dispensed by a BP lessee dealer; and

(d) The BP lessee dealer shall not accept any BP-authorized credit card for the purchase of non-BP motor fuel nor submit to BP any credit card invoice for the lessee deealer's sale of non-BP motor fuel.

6. As the following terms are used in this Settlement Agreement, the following definitions shall apply:

(a) "Lessee dealer" shall mean each person or entity within the United States who has leased a gasoline service station for the sale at retail of motor fuels under any of his lessor's trademarks and has purchased motor fuels from the lessor for sale at retail under any of the lessor's trademarks at any time from May 11, 1967 to the present;

(b) "BP lessee dealer" shall mean a lessee dealer within the United States who has leased a gasoline service station from BP for the sale at retail of motor fuels and purchased motor fuels from BP for sale at retail under any BP trademark at any time from May 11, 1967 to the present;

(c) "BP trademarks" shall mean any source marks, trademarks, trade names, logos, emblems, dispensing pump designs, color combinations associated with BP motor fuels, brands or brand names now owned or used, or that in the future may be owned or used, by BP in connection with sale of BP motor fuel;

(d) "BP motor fuel" shall mean any gasoline or other motor fuel sold or provided by BP to a BP lessee dealer as BP branded gasoline or motor fuel. As between BP and BP lessee dealers, BP shall be the sole determiner of the specifications, grades, types and sources of any BP motor fuel;

(e) "Non-BP motor fuel" shall mean any motor fuel not sold or provided by BP to a BP lessee dealer as BP motor fuel;

(f) "BP" shall mean BP Oil Inc., its predecessors, subsidiaries, divisions and affiliates selling motor fuels to BP lessee dealers within the United States;

(g) "United States" shall mean the fifty states and the District of Columbia; and

(h) the requirement that a BP lessee dealer buy and resell a representative quantity of BP motor fuels shall mean that a BP lessee dealer must purchase directly from BP and continuously stock and offer for sale, utilizing pumps and tanks provided by BP for that purpose, all grades of BP gasoline normally marketed by BP through lessee dealers generally in the same marketing area, in such quantities as are necessary to satisfy customer demand for those grades. If BP has installed pumps and tanks at the station specifically for the purpose of dispensing BP diesel fuel, the dealer must stock and continuously offer BP diesel fuel for sale.

7. The named plaintiffs and all members of the Rule 23(b)(3) class in these consolidated actions as defined in Class Action Order No. 1 who have not made valid and timely elections to be excluded from the class (collectively referred to in this paragraph as the “releasing parties”) hereby release and forever discharge BP and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (collectively referred to in this paragraph as the “released parties”) from any and all liabilities, claims, indebtedness and causes of action, whether at law or in equity, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the amended complaints or in Plaintiffs' Preliminary Statement of Claim, and the releasing parties (and each of them) shall be barred from commencing, prosecuting or maintaining any claims against the released parties, or any of them, that were alleged or could have been alleged by the releasing parties, or any of them, against the released parties, or any of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in Plaintiffs' Preliminary Statement of Claim or the amended complaints, up to the date of the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement. The provisions of this paragraph and paragraph 14, below, are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except BP and the other released parties expressly released in this paragraph.

8. The named plaintiffs and all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in these actions (collectively referred to in this paragraph as the “releasing parties”) hereby release and forever discharge BP and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (collectively referred to in this paragraph as “the released parties”) from any and all liabilities, claims and causes of action for injunctive or declaratory relief arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claims for injunctive or declaratory relief set forth in the amended complaints or Plaintiffs' Preliminary Statement of Claim, and the releasing parties (and each of them) shall be barred from commencing, prosecuting or maintaining any claims for injunctive or declaratory relief against the released parties, or any of them, that were alleged or could have been alleged by the releasing parties, or any of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim for injunctive or declaratory relief set forth in Plaintiffs' Preliminary Statement of Claim or the amended complaints, up to the date of the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement. The provisions of this paragraph and paragraph 14, below, are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except BP and the other released parties expressly released in this paragraph.

9. This Settlement Agreement has been executed for the respective parties by counsel for plaintiffs and by counsel for BP, without trial or adjudication of any issue of fact or law raised by the complaints, amended complaints and answers, and shall not be construed as an admission by any party with respect to any issue of fact or law and shall not be considered as evidence in this litigation on behalf of plaintiffs or any nonsettling defendant, *provided, however*, that plaintiffs agree that if BP complies with the terms of this Settlement Agreement, plaintiffs will not assert against BP that the practices, policies and procedures of BP with respect to BP lessee dealers and with respect to lessee dealers (a) violate the Sherman or Clayton acts or (b) are or will be grounds for any claims against BP.

10. Nothing in this Settlement Agreement shall in any way impair or limit any lawful right that BP may have, by contract, statute or otherwise, to terminate, modify or refuse to renew any of its contracts or leases with BP lessee dealers.

11. It is the intention of the parties that this Settlement Agreement not only will end the present litigation but also will prevent future litigation by lessee dealers (including BP lessee dealers) against BP arising out of BP's present marketing policies, practices and procedures.

12. Upon execution of this Settlement Agreement, BP will pay to counsel for plaintiffs the total sum of $500,000 (“Settlement Sum”). The Settlement Sum will be held in escrow by counsel for plaintiffs pursuant to order of the court and shall be placed in an interest-bearing account. The Settlement Sum shall be the only amount BP is or will be required to pay pursuant to this Settlement Agreement or any judgment entered in this litigation. BP shall not be liable for any costs, attorneys' fees, expenses or escrow agents' fees or expenses, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum.

13. Plaintiffs may, subject to the approval of the Court, use a maximum of three percent of the Settlement Sum for purposes of paying the costs of giving notice to the classes of the settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 22, below, the portion of the Settlement Sum actually disbursed to pay the costs of notice shall not be refundable to BP.

14. The parties agree that, subject to the provisions of paragraphs 7 and 8, above, as to nonsettling defendants, these actions shall be dismissed with prejudice as to BP. Final judgment in favor of BP as set forth in the exhibit to this Settlement Agreement shall be entered by this court in both actions at the time of final approval of this Settlement Agreement.

15. The proposed notice to the classes advising the classes of this Settlement Agreement shall be submitted to counsel for BP to review before submission of the notice to the court. In the event of any dispute between counsel for BP and counsel for plaintiffs about the notice, the court will be asked to resolve the dispute. Plaintiffs and BP will apply to the court for an order requiring all defendants (including Sun and Getty) to provide plaintiffs with lists of their current lessee dealers. Except as provided in the following sentence, BP will not pay the cost of obtaining or preparing any list of current lessee dealers. BP will supply such a list of its dealers (or the best information available) at its sole cost and expense.

16. Plaintiffs agree that in consideration for the payment by BP of the Settlement Sum set forth in paragraph 12, above, if plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of that final judgment (or those judgments) shall be reduced by the greater of —

(a) the amount of the Settlement Sum; or

(b) an amount equal to 2.00% of the dollar amount of the final judgment (or judgments).

It is agreed that this and only this paragraph 16 is provided for the benefit of all defendants (other than Sun and Getty), and any defendant (other than Sun or Getty) may enforce this and only this paragraph 16 against plaintiffs, *provided, however*, that BP is not so limited to rights under this paragraph.

17. BP and plaintiffs agree that BP shall not have any responsibility for any allocation of the Settlement Sum among members of the class.

18. Immediately after conclusion of this litigation, plaintiffs' counsel shall return to BP all copies of all documents produced by BP to plaintiffs, to plaintiffs' counsel or to any of their experts (including all copies of documents in the possession of plaintiffs' experts or of any other person or entity and including all copies of BP documents marked as deposition exhibits) except those containing plaintiffs' counsel's or experts' work product. "Return" shall mean making the documents available to BP at the offices of Berger & Montague, P.C. Plaintiffs' counsel and plaintiffs' experts shall, at the conclusion of this litigation, also immediately destroy all BP documents containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any documents produced by BP. In addition, at the conclusion of this litigation, plaintiffs and plaintiffs' counsel shall immediately comply with the present provisions of paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph 15 of Class Action Order No. 67 whether or not those orders are subsequently vacated or amended. Plaintiffs' counsel shall certify in writing to counsel for BP that the named plaintiffs, plaintiffs' experts and plaintiffs' counsel have complied with this paragraph.

19. Immediately after conclusion of this litigation, BP shall return to counsel for plaintiffs all copies of all documents in BP's or BP's counsel's possession that were produced in discovery proceedings in this litigation (a) by either named plaintiff, (b) by plaintiffs' counsel, (c) by any trial witness designated by plaintiffs or (d) by any person or entity incident to the deposition of Kenneth Black (including copies of documents in the possesion of anyother person or entity and including all copies of all such documents marked as deposition exhibits) except those containing BP's counsel's work product. BP shall also return to counsel for Sun the documents produced by Sun at the depositions of Messrs. Burton and Comly. "Return" shall mean making the documents available at the offices of Schnader, Harrison, Segal & Lewis in Philadelphia, Pennsylvania. BP's counsel shall, at the conclusion of this litigation, also immediately destroy all documents in their possession produced in discovery proceedings in this litigation (a) by either named plaintiff, (b) by plaintiffs' counsel, (c) by any trial witness designated by plaintiffs, (d) by any person or entity incident to the deposition of Kenneth Black or (e) by counsel for Sun at the Comly or Burton depositions containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any of those documents. BP and BP's counsel shall certify in writing to plaintiffs' counsel that BP and BP's counsel have complied with this paragraph.

20. This Settlement Agreement is expressly conditioned upon, *inter alia*, the court's entering a Consent Decree and Judgment in the form set forth in the exhibit to this Settlement Agreement.

21. Unless a subsequent change in circumstances occurs that has material adverse effect on plaintiffs' claims against any nonsettling defendant, plaintiffs will not settle with any nonsettling defendant on terms substantially more favorable to that defendant than to BP unless the more favorable terms are also immediately offered to BP by plaintiffs. If BP accepts the offer, this Settlement Agreement (including, if necessary, the exhibit) will be amended accordingly. If plaintiffs and BP cannot agree on the question whether the terms of another settlement are "substantially more favorable to that defendant than to BP," they will submit the question to the court for binding resolution. It is understood that, with respect to a monetary settlement, plaintiffs will not, unless plaintiffs follow the procedures set forth in the next sentence, accept in settlement less than that settling defendant's percentage share under the defendants' sharing agreement of a total sum of $25 million and that such a monetary settlement satisfies the intent of this paragraph 21. If plaintiffs do accept a lesser sum than that resulting from the formula described in the preceding sentence, plaintiffs will immediately refund to BP a pro rata portion of the Settlement Sum paid by BP.

The provisions of this paragraph 21 relating to nonmonetary settlement terms, are limited to the following defendants:

Amoco Oil Company
Atlantic Richfield Company
Chevron Oil Company
Exxon Corporation
Gulf Oil Corporation
Mobil Oil Corporation
Phillips Petroleum Company
Shell Oil Company
Texaco Inc.
Union Oil Company of California.

22. In the event that the court denies complete approval of this Settlement Agreement or completely approves it but its approval is altered on appeal, or should the contemplated Consent Decree not be made in the exact form set forth in the exhibit or be made but be altered on appeal, then this entire Settlement Agreement shall terminate unless the parties promptly agree to proceed with this Settlement Agreement and Consent Decree as proposed to be modified by the court or by an appellate court. In the event this Settlement Agreement is terminated pursuant to this paragraph, the Settlement Sum (less a maximum of three percent, if previously disbursed incident to giving notice to the classes), plus any accrued interest, shall immediately be returned to BP. In the event that the court grants approval and enters the Consent Decree in the form attached as an exhibit and in the event that the Consent Decree becomes final and nonappealable, then the Settlement Sum

(less any disbursements made incident to giving notice to the classes) may be removed from escrow by plaintiffs subject to further order of the court.

23. This Settlement Agreement contains a full, complete and integrated statement of every term and provision agreed to by the parties. No term or provision in any settlement agreement entered into between plaintiffs and any other defendant for this litigation shall affect this Settlement Agreement (except as provided in paragraph 21, above) or its interpretation. The terms and provisions of this Settlement Agreement are not severable. This Settlement Agreement shall not be orally modified in any respect and can be modified only by the parties' written agreement.

24. This Settlement Agreement shall be construed and interpreted in accordance with the laws (other than the choice-of-laws principles) of the Commonwealth of Pennsylvania.

[SIGNATURES OMITTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN, *et al.*, : CIVIL CLASS ACTION NOS.
Class Representatives, : 71-1137
71-2543
v. :
GULF OIL CORPORATION, *et al.*, :
Defendants. :

SETTLEMENT AGREEMENT

(CHEVRON)

This SETTLEMENT AGREEMENT is made this 21st day of September, 1984, by and between *CHEVRON OIL COMPANY* (Chevron Oil Company and its predecessors, successors, parents, subsidiaries, divisions and affiliates being hereinafter referred to as "Chevron") and named plaintiffs *PAUL J. BOGOSIAN* and *LOUIS J. PARISI*, both individually and on behalf of: (a) all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed timely and valid elections to be excluded from the class, and (b) all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions. Such members of both classes, including the named plaintiffs, are hereinafter collectively referred to as "plaintiffs."

WHEREAS the two above-captioned actions have been instituted against Amerada Hess Corporation; Amoco Oil Company; Atlantic Richfield Company; BP Oil Inc.; Chevron Oil Company; Cities Service Company; Exxon Corporation; Getty Oil Company; Gulf Oil Corporation; Mobil Oil Corporation; Phillips Petroleum Company; Shell Oil Company; Sun Oil Company; Texaco Inc.; and Union Oil Company of California ("defendants"), alleging a conspiracy or conspiracies in violation of Section 1 of the Sherman Act; and

WHEREAS Chevron has answered the amended complaint and has raised defenses and affirmative defenses to all allegations; and

WHEREAS Chevron asserts that its practices, policies and procedures are lawful and reasonable, and Chevron denies that it has (or had) entered into any conspiracy (or conspiracies) and denies that it has (or had) violated the antitrust laws; and

WHEREAS the parties hereto desire amicably to resolve their disputes without the necessity for a lengthy and costly trial;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The provisions of this Settlement Agreement binding upon Chevron shall remain in effect for five (5) years from the date hereof and shall apply only to the operations of Chevron, if any, in the 50 states of the United States and in the District of Columbia. Following said five-year period, Chevron shall have no further obligations pursuant to this Settlement Agreement or pursuant to the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement.

2. Chevron agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of motor fuel which "Chevron lessee dealers," as defined below, may offer for sale or with respect to Chevron's contractual and lease provisions with Chevron lessee dealers.[1] The foregoing agreement does not constitute an admission or evidence of any past or present violation of law by Chevron and shall not be construed as an admission or evidence of any past or present violation of law by Chevron.

3. Chevron further agrees that the express terms of its leases and supply contracts with Chevron lessee dealers, whether taken individually or together, do not and shall not require any Chevron lessee dealer to purchase his entire requirements of motor fuels from Chevron. Nothing in this Settlement Agreement is intended to deny Chevron the following continued rights:

(a) Chevron shall have the right to make deliveries of motor fuels to each Chevron lessee dealer in minimum delivery quantities, as specified by Chevron from time to time for lessee dealers generally in the same marketing area;

(b) Chevron shall have the right to require Chevron lessee dealers to "buy and resell a representative quantity of Chevron branded motor fuels," as defined below;

(c) Chevron shall have the right to protect "Chevron trademarks," as defined below, by requiring that any motor fuel sold by Chevron lessee dealers, which is "non-Chevron motor fuel," as defined below, not be sold under Chevron trademarks or as "Chevron branded motor fuel," as defined below; and to require the Chevron lessee dealers to adhere to Chevron's policies for the protection of Chevron's trademarks; and

(d) Chevron shall have the right to be indemnified and held harmless by the Chevron lessee dealer against all claims of any kind for injury or loss resulting from or arising out of the Chevron lessee dealer's handling, storage, dispensing and/or sale of any non-Chevron motor fuel at the leased premises.

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[1] Nothing in this order shall impair or limit Chevron's right to implement and complete the merger between Chevron's parent, Standard Oil Company of California (now Chevron Corporation), and Gulf Corporation, the parent of Gulf Oil Corporation, including without limitation agreements between Chevron and one or more other defendants with respect to or ancillary to the sale of assets.

4. Chevron may discharge all of its obligations under paragraph 3 by providing to a Chevron lessee dealer the opportunity to install additional pumps and tanks at the service station, in accordance with the procedures and limitations prescribed in paragraph 5, below, for the handling of non-Chevron motor fuels.

5. Every service station lease entered into between Chevron and a Chevron lessee dealer shall provide, in substance, that Chevron shall not unreasonably withhold its consent to the separate installation by the Chevron lessee dealer of additional pumps and tanks to dispense motor fuels not supplied by Chevron which the dealer desires to sell at the service station. Chevron may reasonably withhold its consent (and still have met all of its obligations under paragraph 3, above) unless the Chevron lessee dealer complies with the following procedures:

(a) Any installation of pumps and tanks to dispense non-Chevron motor fuels shall be at the sole cost and expense of the Chevron lessee dealer and pursuant to plans and specifications previously approved in writing by Chevron. Chevron shall not unreasonably withhold its consent to such plans and specifications, but Chevron may require that the proposed installation be of current design, workmanlike and structurally sound, comply with all applicable laws and regulations, and not unreasonably interfere with the use of Chevron's existing facilities and access to pumps dispensing Chevron branded motor fuels. Such additional pumps and tanks shall be maintained by the Chevron lessee dealer at the Chevron lessee dealer's sole cost and expense. In the event of any leak into the environment from such additional pumps and/or tanks, or the use of such additional pumps and/or tanks in a manner which is otherwise unsafe or prohibited by applicable law or regulation, the Chevron lessee dealer shall immediately cease using such additional pumps and tanks and shall immediately, at his sole cost and expense, correct all such problems. Upon such correction, the Chevron lessee dealer may resume using such additional pumps and tanks. In using and maintaining the additional pumps and tanks, the Chevron lessee dealer shall comply with all applicable laws and regulations and shall indemnify and hold Chevron harmless against all claims of any kind for injury or loss resulting from or arising out of the Chevron lessee dealer's handling, storage, dispensing and/or sale of any non-Chevron motor fuel at the service station. The Chevron lessee dealer shall, at his sole cost and expense, include the additional pumps and tanks within the insurance coverage that each Chevron lessee dealer is otherwise required to carry.

(b) If Chevron does not own the service station premises in fee but leases the land, the station or both from a third party, any installation and/or operation by the Chevron lessee dealer of such additional pumps and tanks shall be subject to the Chevron lessee dealer's obtaining all necessary consents which may be required by Chevron's lessor. In the event that Chevron's rent to the lessor or from the Chevron lessee dealer is based upon gallonage sold at the service station, the Chevron lessee dealer shall also execute any required verification as to sales of non-Chevron motor fuels.

(c) The Chevron lessee dealer shall take all steps reasonably required by Chevron to protect Chevron's trademarks so long as said steps are not prohibited by law. Specifically, the Chevron lessee dealer shall take all of the following steps:

(1) The Chevron lessee dealer shall prominently post a sign on any pump used to dispense non-Chevron motor fuels, disclosing to the public that the product being dispensed was not obtained from Chevron. The sign must be sufficiently durable and permanent in nature that it is not readily subject to destruction by the elements or to inadvertent removal by customers, the Chevron lessee dealer or the dealer's employees;

(2) Signs advertising non-Chevron motor fuels shall not be placed on the same sign pole with signs advertising Chevron branded motor fuels. The Chevron lessee dealer shall at all times give the dispensing equipment, displays and advertisements for Chevron's branded motor fuels as prominent and convenient positions as those of non-Chevron motor fuels sold at the service station. Except as required to satisfy paragraph (c)(1), above, the dealer shall not remove, relocate or alter any Chevron installed identification at the service station; and

(3) If Chevron permits sales of non-Chevron motor fuels to be charged on the Chevron National Travel Card and/or other credit card(s) authorized by Chevron, the credit card invoices evidencing such sales shall indicate on a separate line of the invoice that a non-Chevron motor fuel is being sold. Nothing in this Settlement Agreement shall be deemed to require Chevron to accept payment on the Chevron National Travel Card and/or other credit cards authorized by Chevron for non-Chevron motor fuels.

6. As used herein, the following definitions shall apply:

(a) "lessee dealer(s)" shall mean each person or entity within the United States who has leased a gasoline service station for the sale at retail of motor fuel under his lessor's trademark and has purchased motor fuels from the lessor for sale at retail under any of the lessor's trademarks at any time from May 11, 1967 to the present.

(b) "Chevron lessee dealer(s)" shall mean a lessee dealer within the United States who, on the date of this Settlement Agreement, leased a gasoline service station from Chevron for the sale at retail of Chevron branded motor fuel.[2] The term shall not include the dealer at any station thereafter sold by Chevron, including specifically but without limitation any dealer in a service station which is sold to comply with requirements imposed by the Federal Trade Commission in connection with the merger between Chevron's parent, Standard Oil Company of California (now Chevron Corporation), and Gulf Corporation.

(c) "Chevron trademark(s)" shall mean any source marks, trademarks, trade names, slogans, service marks, logos, emblems, dispensing pump designs, color combinations associated with Chevron branded motor fuels, brands or brand names now owned or used, or which in the future may be owned or used, by Chevron in connection with sale of Chevron branded motor fuels.

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[2] On January 1, 1977, defendant Chevron Oil Company was reorganized and changed its name to Chevron U.S.A. Inc., and acquired service station operations formerly those of Chevron's parent company, Standard Oil Company of California (now Chevron Corporation). The Chevron class members in this litigation were identified as certain lessee dealers whose stations were located in the geographical areas formerly served by Chevron Oil Company, the corporate entity which first appeared in this litigation. The lessee dealers at service stations located in geographical areas formerly served by Standard Oil Company of California are not included within the term "Chevron lessee dealer(s)."

(d) ''Chevron branded motor fuel(s)'' shall mean any gasoline or other motor fuel sold by Chevron directly to a Chevron lessee dealer as Chevron branded gasoline or motor fuel, irrespective of the refinery at which such fuel may have been manufactured.

(e) ''Non-Chevron motor fuel(s)'' shall mean any gasoline or motor fuel not sold directly by Chevron to a Chevron lessee dealer as Chevron branded motor fuel.

(f) The requirement that a Chevron lessee dealer shall ''buy and resell a representative quantity of Chevron branded motor fuels'' shall mean that a Chevron lessee dealer must purchase directly from Chevron and continuously stock and offer for sale, utilizing pumps and tanks provided by Chevron for that purpose, all grades of Chevron gasoline normally marketed by Chevron through lessee dealers generally in the same marketing area, in such quantities as are necessary to satisfy customer demand for such products. If Chevron has installed pumps and tanks at the service station specifically for the purpose of dispensing Chevron diesel fuel, the term shall also mean that the dealer must stock and continuously offer for sale Chevron diesel fuel. The requirement to buy and resell a representative quantity of Chevron branded motor fuels normally means that the dealer must install his own pumps and tanks if he wishes to handle non-Chevron motor fuels.

7. The named plaintiffs and all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed valid and timely elections to be excluded from the class (hereinafter collectively referred to in this paragraph as the ''releasing parties'') hereby release and forever discharge Chevron and its predecessors, successors, subsidiaries, divisions, parents and affiliates, and the past and present directors, officers, agents and employees of each of them (hereinafter collectively referred to as the ''released parties'') from any and all liabilities, claims, indebtedness and causes of action, whether at law or in equity, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum; and the releasing parties (and each of them) shall be barred from prosecuting any claims against the released parties, or any of them, which were alleged or could have been alleged by the releasing parties, or any of them, against the released parties, or any of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claims set forth in Plaintiffs' Preliminary Statement of Claim or the Amended Complaints or Plaintiffs' Pretrial Memorandum, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 14 hereof are not intended to and do not release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Chevron and the other released parties expressly released in this paragraph.

8. The named plaintiffs and all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions (hereinafter collectively referred to in this paragraph as the ''releasing parties'') hereby release and forever discharge Chevron and its predecessors, successors, subsidiaries, divisions, parents and affiliates, and the past and present directors, officers, agents and employees of each of them (hereinafter collectively referred to as ''the released parties'') from any and all liabilities, claims and causes of action for injunctive or declaratory relief arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claims for injunctive or declaratory relief set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum; and the releasing parties (and each of them) shall be barred from prosecuting any claims for injunctive or declaratory relief against the released parties, or any of them, which were alleged or could have been alleged by the releasing parties, or any of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim for injunctive relief or declaratory relief set forth in Plaintiffs' Preliminary Statement of Claim or the Amended Complaints or Plaintiffs' Pretrial Memorandum, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 14 hereof are not intended to and do not release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Chevron and the other released parties expressly released in this paragraph.

9. This Settlement Agreement has been executed for the respective parties hereto, by counsel for plaintiffs and by counsel for Chevron, and without trial or adjudication of any issue of fact or law raised by the complaints and answers, and shall not be construed as an admission by Chevron with respect to any such issue of fact or law and shall not be considered as evidence in this litigation on behalf of any non-settling defendant.

10. Nothing in this Settlement Agreement shall in any way impair or limit any right that Chevron has, by contract, statute or otherwise, lawfully to rent, loan or lease to a Chevron lessee dealer pumps and tanks to dispense motor fuels, conditioned expressly or implicitly upon that dealer's agreement to use such facilities only for handling Chevron branded motor fuels. Nothing in this Settlement Agreement shall in any way impair or limit any right that Chevron has, by contract, statute or otherwise, lawfully to terminate, modify or refuse to renew any of its contracts or leases with Chevron lessee dealers.

11. It is the intention of the parties hereto that this Settlement Agreement will not only end the present litigation but also will prevent future litigation by lessee dealers (including Chevron lessee dealers) against Chevron arising out of Chevron's present marketing policies, practices and procedures. Plaintiffs agree that, in light of the terms and conditions of paragraphs 1 through 6 of this Settlement Agreement and paragraphs 5 through 10 of the Order and Consent Decree, Chevron's policies, practices and procedures with respect to Chevron lessee dealers and other lessee dealers do not violate the antitrust or trademark laws of the United States or any state; that if Chevron complies with the terms of this Settlement Agreement and the Order and Consent Decree, Chevron's practices, policies and procedures as provided for therein do not violate the antitrust or trademark laws of the United States or any state; and that if there is such compliance, plaintiffs will not assert that Chevron's policies, practices and procedures with respect to Chevron lessee dealers or lessee dealers violate the antitrust or trademark laws of the United States or any state or are or will be grounds for any claims thereunder against Chevron.

12. Upon execution of this Settlement Agreement, Chevron shall pay to counsel for plaintiffs the total sum of $1,167,500 ("Settlement Sum"). The Settlement Sum shall be held in escrow by counsel for plaintiffs pursuant to order of the Court and shall be placed in an interest-bearing account. The Settlement Sum shall be the only amount Chevron is required to pay pursuant to this Settlement Agreement or pursuant to any judgment(s) subsequently entered in this litigation. Chevron shall not be liable for any costs or attorneys' fees, expenses, escrow agents' fees or expenses, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum.

13. Plaintiffs may, subject to the approval of the Court, use a maximum of three (3) percent of the Settlement Sum (i.e. $35,025) for purposes of paying the costs of giving notice to the classes of the settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 22 of this Settlement Agreement, any portion of the Settlement Sum actually disbursed to pay such costs of notice shall not be refundable to Chevron.

14. The parties agree that, subject to the provisions of paragraphs 7 and 8 as to non-settling defendants, the above captioned actions shall be dismissed with prejudice as to Chevron. Final judgment in favor of Chevron as set forth in Exhibit A shall be entered by the District Court in both actions at the time of final approval of this Settlement Agreement.

15. The proposed notice to the classes advising the classes of this Settlement Agreement shall be submitted to counsel for Chevron for review and approval prior to submission of the notice to District Court. In the event of any dispute between counsel for Chevron and counsel for plaintiffs as to the form or substance of the notice, the District Court will resolve the dispute. Plaintiffs and Chevron shall apply to the Court for an order requiring all defendants (including Sun and Getty) to supply plaintiffs with lists of their current lessee dealers. Except as set forth in the following sentence of this paragraph, Chevron shall not pay the costs of obtaining or preparing any such list of lessee dealers. Chevron shall supply a list of current Chevron lessee dealers (or the best information available) at its sole cost and expense.

16. Plaintiffs agree that in consideration for the payment by Chevron of the Settlement Sum set forth in paragraph 12 of this Settlement Agreement, if plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of said final judgment (or judgments) shall be reduced by the greater of:

(a) the amount of the Settlement Sum; or

(b) an amount equal to 4.67% of the dollar amount of said final judgment (or judgments).

It is agreed that this and only this paragraph 16 is provided for the benefit of all defendants (other than Sun and Getty), and any defendant (other than Sun or Getty) may enforce this and only this paragraph 16 against plaintiffs, provided however that Chevron's rights under this paragraph are in addition to its rights under the other provisions of this Settlement Agreement.

17. Chevron and plaintiffs agree that Chevron shall not have any responsibility for any allocation of the Settlement Sum among members of the class.

18. Immediately after conclusion of this litigation, plaintiff's counsel shall return to Chevron: 1) all copies of all documents produced by Chevron, Chevron's attorneys or witnesses designated by Chevron; and 2) all copies of all deposition transcripts (and exhibits) of all present or former Chevron employees and attorneys. The foregoing shall include all copies of documents or deposition transcripts (and exhibits) in the possession of plaintiffs' experts or any other person or entity, except those containing plaintiffs' counsels' work product or plaintiffs' experts' work product. "Return" shall mean making said documents and deposition transcripts (and exhibits) available to Chevron at the offices of Berger and Montague. Plaintiffs' counsel and plaintiffs' experts shall, at the conclusion of this litigation, also immediately destroy any other documents and deposition transcripts (and exhibits) (other than public documents or documents filed in this litigation under seal), including documents containing "work product," or containing extracts, quotations or other references from any documents produced by Chevron, Chevron's attorneys or witnesses designated by Chevron or from any deposition transcripts (and exhibits) of present or former Chevron employees or attorneys. In addition, at the conclusion of this litigation, plaintiffs and plaintiffs' counsel shall immediately comply with the present provisions of paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph 15 of Class Action Order No. 67 whether or not such Class Action Orders are subsequently vacated or amended. Plaintiffs' counsel shall certify in writing to counsel for Chevron that the named plaintiffs, plaintiffs' experts and plaintiffs' counsel have complied with this paragraph.

19. Immediately after conclusion of this litigation, Chevron shall return to counsel for plaintiffs: 1) all copies of all documents in Chevron's or Chevron's counsel's possession which were produced by the named plaintiffs, by plaintiffs' counsel, or by any trial witness designated by plaintiffs and by Messrs. Black, Burton, Byron and Comly; and 2) all copies of all depositions, transcripts (and exhibits) of plaintiffs, or plaintiffs' expert witnesses and Messrs. Black, Burton, Byron and Comly. The foregoing shall include all copies of documents or deposition transcripts and exhibits in the possession of Chevron's experts or any other person or entity except those containing Chevron's counsel's work product or Chevron's experts' work product. "Return" shall mean making such documents available at the offices of Pillsbury Madison & Sutro in San Francisco, California. Chevron's counsel shall, at the conclusion of this litigation, also immediately destroy: 1) any and all documents in their possession produced in discovery in this litigation by the named plaintiffs, by plaintiffs' counsel, by any trial witness designated by plaintiffs and by Messrs. Black, Burton, Byron and Comly; and 2) copies of all deposition transcripts (and exhibits) as specified above (other than public documents or documents listed under seal) containing work product or containing extracts, quotations or other references from any such documents. Chevron's counsel shall certify in writing to plaintiffs' counsel that Chevron and Chevron's counsel have complied with this paragraph.

20. Immediately upon the execution of this Settlement Agreement, Chevron shall have no obligation to provide any further pretrial discovery in these actions. The attendance of any present or former Chevron employee or attorney at the trial of these actions shall only be pursuant to subpoenas properly issued pursuant to Rule 45 of the Federal Rules of Civil Procedure.

21. This Settlement Agreement is expressly conditioned upon, inter alia, the Court's entering a Consent Decree and Judgment in the exact form set forth in Exhibit A to this Settlement Agreement.

22. In the event that the Court denies complete approval of this Agreement or completely approves it but is reversed on appeal, or should the Consent Decree contemplated hereby not be made in the exact form set forth in Exhibit A or be made but be reversed or modified on appeal, then this entire Settlement Agreement shall terminate unless all parties promptly agree to proceed with this Settlement Agreement and/or Consent Decree as proposed to be modified by the Court. In the event this Settlement Agreement is terminated pursuant to this paragraph, the Settlement Sum (less a maximum of three (3) percent of the settlement sum i.e. $35,025, if previously disbursed incident to giving notice to the classes), plus any accrued interest, shall be immediately returned to Chevron. In the event that the Court grants approval and enters the Consent Decree in the form attached as Exhibit A and in the event that the Consent Decree (Exhibit A) becomes final and non-appealable, then the Settlement Sum (less any disbursements made incident to giving notice to the classes) may be removed from escrow by plaintiffs subject to further order of the Court.

23. This Settlement Agreement contains a full, complete and integrated statement of each and every term and provision agreed to by and among the parties hereto. No term or provision in any settlement agreement entered into between plaintiffs and any other defendant with respect to this litigation shall affect this Settlement Agreement or the interpretation thereof. The terms and provisions of this Settlement Agreement are not severable. This Settlement Agreement shall not be orally modified in any respect, and can be modified only by the written agreement of the parties hereto.

24. This Settlement Agreement shall be construed and interpreted in accordance with the laws (other than the choice-of-laws principles) of the Commonwealth of Pennsylvania.

[SIGNATURES OMITTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN, *et al.*,	:	CIVIL CLASS ACTION
Class Representatives,	:	
v.	:	
GULF OIL CORPORATION, *et al.*,	:	NOS. 71-1137 71-2543
Defendants.	:	

SETTLEMENT AGREEMENT

(CITIES)

This Settlement Agreement is made this 21st day of September, 1984, by and between Cities Service Company, successor in interest of Cities Service Oil Company, a named defendant in these actions, (Cities Service Company and its predecessors, subsidiaries, divisions and affiliates being hereinafter referred to as "Cities") and named plaintiffs Paul J. Bogosian and Louis J. Parisi, both individually and on behalf of: (a) all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed timely and valid elections to be excluded from the class, and (b) all members of the Rule 23(b)(2) class consisting of all present lessee-dealers of all defendants in the above-captioned actions. Such members of both classes, including the named plaintiffs, are hereinafter collectively referred to as "plaintiffs".

WHEREAS, the two above-captioned actions have been instituted against Amerada Hess Corporation; Amoco Oil Company; Atlantic Richfield Company; BP Oil Inc.; Chevron Oil Company; Cities Service Oil Company; Exxon Corporation; Getty Oil Company; Gulf Oil Corporation; Mobil Oil Corporation; Phillips Petroleum Company; Shell Oil Company; Sun Oil Company; Texaco Inc.; and Union Oil Company of California ("defendants"), alleging a conspiracy or conspiracies in violation of Section 1 of the Sherman Act; and

WHEREAS, Cities has answered the complaints and amended complaints and has raised defenses and affirmative defenses to all allegations; and

WHEREAS, Cities asserts that its practices, policies and procedures were and are lawful and reasonable, and Cities denies that it has (or had) entered into any conspiracy (or conspiracies) and denies that it has violated the antitrust laws; and

WHEREAS, beginning in 1983, all of the assets relating to the refining, transportation and marketing of motor fuels, including all lessee-dealer and owner-dealer activities, owned by Cities were transferred to CITGO Petroleum Corporation, a subsidiary of Cities; and

WHEREAS, on August 31, 1983, Cities sold all of the issued and outstanding stock of CITGO Petroleum Corporation to The Southland Corporation, which is not a party to this action; and

WHEREAS, Cities does not presently have any lessee-dealers nor does it presently have any intention to acquire or develop any such dealers; and

WHEREAS, the parties hereto desire amicably to resolve their disputes without the necessity for a lengthy and costly trial;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The provisions of this Settlement Agreement applicable to and binding upon Cities shall remain in effect for five (5) years from the date hereof and shall apply only to the operations of Cities, if any, in the fifty states of the United States and in the District of Columbia. Following said five (5) year period, Cities shall have no further obligations pursuant to this Settlement Agreement or pursuant to the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement.

2. Cities agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of motor fuel which Cities lessee-dealers may offer for sale or with respect to Cities contractual and lease provisions with Cities lessee-dealers. The foregoing agreement does not constitute an admission or evidence of any past or present violation of law by Cities and shall not be construed as an admission or evidence of any past or present violation of law by Cities.

3. As used herein, the following definitions shall apply:

(a) "lessee-dealer(s)" shall mean each person or entity within the United States who has leased a gasoline service station for the sale at retail of motor fuel under his lessor's trademark and has purchased motor fuels from the lessor for sale at retail under any of the lessor's trademarks at any time from May 11, 1967 to the present.

(b) "Cities lessee-dealer(s)" shall mean a lessee-dealer within the United States who has leased a gasoline service station from Cities for the sale at retail of motor fuel and purchased motor fuel from Cities for sale at retail under Cities' trademark(s) at any time from May 11, 1967 through August 31, 1983, or any such lessee-dealer who is acquired or developed by Cities within five (5) years from the date of this Settlement Agreement.

(c) "Cities trademark(s)" shall mean any source marks, trademarks, trade names, logos, emblems, dispensing pump designs, color combinations associated with Cities motor fuels, brands or brandnames owned or used, or which in the future may be owned or used, by Cities in connection with sale of Cities motor fuel.

(d) "Cities motor fuel(s)" shall mean any gasoline or other motor fuel sold or provided by Cities to a Cities lessee-dealer as Cities branded gasoline or motor fuel. As between Cities and Cities lessee-dealers, Cities shall be the sole determiner of the specifications, grades, types and sources of "Cities motor fuel".

(e) "Cities" shall mean Cities Service Company, its predecessors, subsidiaries, divisions and affiliates, except that CITGO Petroleum Corporation, which has been sold to The Southland Corporation, shall be included only through August 31, 1983.

(f) "United States" shall mean the 50 states and the District of Columbia.

4. The named plaintiffs and all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed timely and valid elections to be excluded from the class (hereinafter collectively referred to in this paragraph as the "releasing parties") hereby release and forever discharge Cities and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as "the released parties") from any and all liabilities, claims, indebtedness and causes of action, whether at law or in equity, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, and the releasing parties (and each of them) shall be barred from prosecuting any claims against the released parties, or any one of them, which were alleged or could have been alleged by the releasing parties, or any one of them, against the released parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 10 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Cities and the other released parties expressly released in this paragraph.

5. The named plaintiffs and all members of the Rule 23(b)(2) class consisting of all present lessee-dealers of all defendants in the above-captioned actions (hereinafter collectively referred to in this paragraph as the "releasing parties") hereby release and forever discharge Cities and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as "the released parties") from any and all liabilities, claims, and causes of action for injunctive or declaratory relief arising under the antitrust or trademark laws of the United States or of any state, including without limitation, any claims for injunctive or declaratory relief set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, and the releasing parties (and each of them) shall be barred from prosecuting any claims for injunctive or declaratory relief against the released parties, or any of them, which were alleged or could have been alleged by the releasing parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim for injunctive or declaratory relief set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 10 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Cities and the other released parties expressly released in this paragraph.

6. This Settlement Agreement shall not be considered as evidence in this litigation on behalf of any non-settling defendant. Provided, however, that for and in consideration of Cities' compliance with the terms and conditions of this Settlement Agreement and of an Order and Consent Decree in the exact form attached hereto as Exhibit A, plaintiffs agree that Cities policies, practices and procedures with respect to Cities lessee-dealers and other lessee-dealers do not violate the antitrust or trademark laws of the United States or any state. Plaintiffs further agree that, for and in consideration of such compliance, plaintiffs will not assert against Cities that the policies, practices and procedures of Cities with respect to Cities lessee-dealers and other lessee-dealers (a) violate the antitrust or trademark laws of the United States or any state, or (b) are or will be grounds for any claims thereunder against Cities.

7. It is the intention of the parties hereto that this Settlement Agreement will not only end the present litigation but also will prevent future litigation by lessee-dealers (including Cities lessee-dealers) against Cities arising out of Cities' marketing policies, practices and procedures from May 11, 1967 to the present.

8. Upon execution of this Settlement Agreement, Cities shall pay to counsel for plaintiffs the total sum of seven hundred and seven thousand and five hundred dollars ($707,500.00) ("Settlement Sum"). The Settlement Sum shall be held in escrow by counsel for plaintiffs pursuant to order of the Court and shall be placed in an interest-bearing account. The Settlement Sum shall be the only amount Cities is required to pay pursuant to this Settlement Agreement or pursuant to any judgment(s) subsequently entered in this litigation. Cities shall not be liable for any costs or attorneys' fees, expenses, escrow agents' fees or expenses, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum.

9. Plaintiffs may, subject to the approval of the Court, use a maximum of three (3) percent of the Settlement Sum for purposes of paying the costs of giving notice to the classes of the settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 18 of this Settlement Agreement, any portion of the Settlement Sum actually disbursed to pay such costs of notice (up to a maximum of three (3) percent of the Settlement Sum) shall not be refundable to Cities.

10. The parties agree that, subject to the provisions of paragraphs 4 and 5 as to non-settling defendants, the above-captioned actions shall be dismissed with prejudice as to Cities. Final judgment in favor of Cities as set forth in Exhibit A shall be entered by the District Court in both actions at the time of final approval of this Settlement Agreement.

11. The proposed notice to the classes advising the classes of this Settlement Agreement shall be submitted to counsel for Cities for review and approval prior to submission of the notice to the District Court. In the event of any dispute between counsel for Cities and counsel for plaintiffs as to the form or substance of the notice, the District Court will resolve the dispute. Plaintiffs and Cities shall apply to the Court for an Order requiring all defendants (including Sun and Getty) to provide plaintiffs with lists of their current lessee-dealers. Cities shall not pay the cost of obtaining or preparing any such list of current lessee-dealers. Cities shall certify to the Court that it has no current lessee-dealers.

12. Plaintiffs agree that in consideration for the payment by Cities of the Settlement Sum set forth in paragraph 8 of this Settlement Agreement, if plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of said final judgment (or judgments) shall be reduced by the greater of:

(a) the amount of the Settlement Sum; or

(b) an amount equal to 2.83% of the dollar amount of said final judgment (or judgments).

It is agreed that this and only this paragraph 12 is provided for the benefit of all defendants (other than Sun and Getty), and any defendant (other than Sun or Getty) may enforce this and only this paragraph 12 against plaintiffs, provided however that Cities' rights under this paragraph are in addition to its rights under the other provisions of this Settlement Agreement.

13. Cities and plaintiffs agree that Cities shall not have any responsibility for any allocation of the Settlement Sum among members of the class.

14. Immediately after conclusion of this litigation, plaintiffs' counsel shall return to Cities all copies of all documents produced by Cities to plaintiffs or to plaintiffs' counsel or to any of plaintiffs' experts (including all copies of documents in the possession of plaintiffs' experts or any other person or entity and including all copies of all Cities documents marked as deposition exhibits) except those containing plaintiffs' counsels' work product or plaintiffs' experts' work product. ''Return'' shall mean making said documents available to Cities at the offices of Berger & Montague. Plaintiffs' counsel and plaintiffs' experts shall, at the conclusion of this litigation, also immediately destroy any and all Cities documents containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any documents produced by Cities. In addition, at the conclusion of this litigation, plaintiffs and plaintiffs' counsel shall immediately comply with the present provisions of paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph 15 of Class Action Order No. 67 whether or not such Class Action Orders are subsequently vacated or amended. Plaintiffs' counsel shall certify in writing to counsel for Cities that the named plaintiffs and plaintiffs' experts and plaintiffs' counsel have complied with this paragraph.

15. Immediately after conclusion of this litigation, Cities shall return to counsel for plaintiffs all copies of all documents in Cities' or Cities' counsel's possession which were produced in discovery proceedings in this litigation: (a) by either named plaintiff; (b) by plaintiffs' counsel; (c) by any trial witness designated by plaintiffs; or (d) by any person or entity incident to the deposition of Kenneth Black (including copies of documents in the possession of Cities' experts or any other person or entity and including all copies of all such documents marked as deposition exhibits) except those containing Cities' counsel's work product or Cities' expert's work product. Cities shall also return to counsel for Sun any documents in its possession which were produced by Sun at the depositions of Messrs. Burton and Comly. ''Return'' shall mean making said documents available at the offices of Rawle & Henderson. Cities' counsel shall, at the conclusion of this litigation, also immediately destroy any and all documents in their possession produced in discovery proceedings in this litigation: (a) by either named plaintiff; (b) by plaintiffs' counsel; (c) by any trial witness designated by plaintiffs; (d) by any person or entity incident to the deposition of Kenneth Black; or (e) by counsel for Sun at the Comly or Burton depositions containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any such documents. Cities' counsel shall certify in writing to plaintiffs' counsel that Cities and Cities' counsel have complied with this paragraph.

16. This Settlement Agreement is expressly conditioned upon, *inter alia*, the District Court entering a Consent Decree and Judgment in the exact form set forth in Exhibit A to this Settlement Agreement.

17. Plaintiffs agree that, immediately upon the execution of this Settlement Agreement, Cities shall have no obligation to provide any further pretrial discovery in these actions. Plaintiffs further agree that the attendance of any present or former Cities employee at the trial of these actions shall only be pursuant to subpoenas properly issued pursuant to Rule 45 of the Federal Rules of Civil Procedure. In addition, plaintiffs agree that Cities shall have no further obligation under Class Action Order No. 51 and that the District Court may enter an Order vacating Class Action Order No. 51 forthwith.

18. In the event that the District Court denies complete approval of this Settlement Agreement or completely approves it but is reversed on appeal, or should the Consent Decree and Judgment contemplated hereby not be made in the exact form set forth in Exhibit A or be made but be reversed or modified on appeal, then this entire Settlement Agreement shall terminate unless all parties promptly agree to proceed with this Settlement Agreement and/or Consent Decree and Judgment as modified or proposed to be modified by the District Court or the Appellate Court. In the event this Settlement Agreement is terminated pursuant to this paragraph, the Settlement Sum (less a maximum of three (3) percent of the Settlement Sum, if previously disbursed incident to giving notice to the classes), plus any accrued interest, shall be immediately returned to Cities. In the event that the District Court grants approval and enters the Consent Decree and Judgment in the exact form attached as Exhibit A and in the event that the Consent Decree and Judgment (Exhibit A) become final and nonappealable, then the Settlement Sum

(less any disbursements made incident to giving notice to the classes) may be removed from escrow by plaintiffs' counsel subject to further Order of the District Court.

19. This Settlement Agreement contains a full, complete and integrated statement of each and every term and provision agreed to by and among the parties hereto. No term or provision in any settlement agreement entered into between plaintiffs and any other defendant with respect to this litigation shall affect this Settlement Agreement or the interpretation thereof. The terms and provisions of this Settlement Agreement are not severable. This Settlement Agreement shall not be orally modified in any respect, and can be modified only by the written agreement of the parties hereto.

20. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of law rules of the Commonwealth of Pennsylvania.

[SIGNATURES OMITTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN, *et al.*, : CIVIL CLASS ACTION
LOUIS J. PARISI, *et al.*, :
Class Representatives, :
v. :
GULF OIL CORPORATION, *et al.*, : NOS. 71-1137
: 71-2543
Defendants. :

SETTLEMENT AGREEMENT

(PHILLIPS)

This Settlement Agreement is made this 21st day of September, 1984, by and between Phillips Petroleum Company (the term "Phillips Petroleum Company" includes its predecessors, subsidiaries, divisions and affiliates and Phillips Petroleum Company is hereinafter referred to as "Phillips") and named Plaintiffs Paul J. Bogosian and Louis J. Parisi, both individually and on behalf of: (a) all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed timely and valid elections to be excluded from the class, and (b) all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions. Such members of both classes, including the named Plaintiffs, are hereinafter collectively referred to as "Plaintiffs."

WHEREAS, the two above-captioned actions have been instituted against Amerada Hess Corporation; Amoco Oil Company; Atlantic Richfield Company; BP Oil, Inc.; Chevron Oil Company; Cities Service Company; Exxon Corporation; Getty Oil Company; Gulf Oil Corporation; Mobil Oil Corporation; Phillips Petroleum Company; Shell Oil Company; Sun Oil Company; Texaco, Inc.; and Union Oil Company of California ("defendants"), alleging a conspiracy or conspiracies in violation of Section 1 of the Sherman Act; and

WHEREAS, Phillips has answered the complaints and amended complaints and has raised defenses and affirmative defenses to all allegations; and

WHEREAS, Phillips asserts that its practices, policies and procedures are lawful and reasonable, and Phillips denies that it has (or had) entered into any conspiracy (or conspiracies) and denies that it has violated the antitrust laws; and

WHEREAS, the parties hereto desire amicably to resolve their disputes without the necessity for a lengthy and costly trial;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The provisions of this Settlement Agreement binding upon Phillips shall remain in effect for five (5) years from the date hereof and shall apply only to the operations of Phillips, if any, in the fifty states of the United States and in the District of Columbia. Following said five (5) year period, Phillips shall have no further obligations pursuant to this Settlement Agreement or pursuant to the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement.

2. Phillips agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of automotive motor fuel which Phillips lessee dealers may offer for sale or with respect to Phillips' contractual and lease provisions with Phillips lessee dealers. The foregoing agreement does not constitute an admission or evidence of any past or present violation of law by Phillips and shall not be construed as an admission or evidence of any past or present violation of law by Phillips.

3. Phillips further agrees that the express terms of its dealer agreements (lease) and reseller's contracts with Phillips lessee dealers, whether taken individually or together, do not and shall not require any Phillips lessee dealer to purchase his entire requirement of automotive motor fuel from Phillips. Nothing in this Settlement Agreement is intended to deny Phillips the continued right:

(a) to require that Phillips lessee dealers maintain on the premises representative amounts of Phillips branded automotive motor fuel for resale to the public; and

(b) to protect Phillips' trademarks by, *inter alia*,

(i) requiring that any non-Phillips automotive motor fuel sold by Phillips lessee dealers may not be sold under any Phillips trademark or any trademark confusingly similar to a Phillips trademark or under circumstances which would lead the public to believe that such non-Phillips automotive motor fuel is Phillips branded automotive motor fuel and

(ii) requiring that Phillips lessee dealers adhere strictly to the trademark and brand protection provisions contained in dealer agreements (lease) and/or reseller's contracts between Phillips and the Phillips lessee dealer and to guidelines issued by Phillips to Phillips' customers from time to time relating to the protection of Phillips' trademarks, and

(c) to be indemnified and held harmless by the Phillips lessee dealer, consistent with the terms and conditions set forth in the dealer agreements (lease) and/or reseller's contracts between Phillips and the Phillips lessee dealer, against all claims of any kind resulting from or arising out of the Phillips lessee dealer's purchasing, handling, storage, distribution, allocation, dispensing, pricing and/or sale of any non-Phillips automotive motor fuels at the leased premises.

4. For purposes of discharging all of its obligations under paragraph 3, above, Phillips may at its discretion and option, on a station-by-station basis or otherwise, and with respect to any one or more Phillips lessee dealers, either:

(a) allow a Phillips lessee dealer to debrand his pumps in the manner set forth in the letters sent by Phillips to All Branded Jobbers and Branded Dealers on May 31, 1979 or in the manner set forth in any guidelines subsequently issued by Phillips that are substantially similar. Nothing herein shall affect Phillips' right, at its discretion and option, to modify and interconnect the existing tank and pump system at any station leased by a Phillips lessee dealer so as to maintain the aggregate storage and delivery capacities for Phillips branded automotive motor fuel; or

(b) provide a Phillips lessee dealer the opportunity to add additional pumps and tanks, in accordance with the procedures and limitations prescribed in paragraph 5 below.

Under either alternative (a) or (b), Phillips shall have the right to restrict the size and the location of any signs displayed at the leased premises which advertise the sale of non-Phillips branded automotive motor fuels.

5. For purposes of discharging all of its obligations under paragraph 3 above, should Phillips, in its sole discretion, choose to allow the Phillips lessee dealer to install additional pumps and tanks at the leased service station for the purpose of selling non-Phillips automotive motor fuel (it being understood that Phillips may reasonably withhold its consent to such alteration and still have met the requirements under paragraph 3 above) then the Phillips lessee dealer must comply with the following:

(a) The Phillips lessee dealer shall provide advance written notice of lessee dealer's desire to install such pumps and tanks. As a part of such notice, the Phillips lessee dealer shall advise Phillips of the identity of the designers and the installers of such pumps and tanks and of the location on the premises at which the additional pumps and tanks are intended to be placed. No construction may be undertaken unless and until Phillips has approved in writing both the designers and installers and the location on the premises at which the additional pumps and tanks are to be placed, provided, however, that Phillips will not unreasonably withhold its approval;

(b) Any installation of pumps and tanks to dispense non-Phillips automotive motor fuel shall be at the sole cost and expense of the Phillips lessee dealer;

(c) The Phillips lessee dealer shall obtain all governmental permits, approvals, licenses, authorizations, waivers and/or consents;

(d) Phillips may, at its option, require that the Phillips lessee dealer furnish Phillips with a completion bond and/or a payment and performance bond for the alteration, in favor of Phillips;

(e) The alteration shall be workmanlike and structurally sound and shall comply with all applicable laws and regulations;

(f) The performance of the alteration work and the alteration when completed shall not interfere with access to, use of, maintenance or repair of Phillips' existing facilities and equipment dispensing Phillips branded automotive motor fuel to the public and such other areas as existing bays, driveways, car wash, tanks and service area. It is acknowledged, however, that during the actual performance of the installation work there may be some unavoidable interference with the access to Phillips' existing facilities, which interference the lessee dealer shall keep to a minimum;

(g) Such additional pumps and tanks shall be maintained by the Phillips lessee dealer at the lessee dealer's sole cost and expense;

(h) With regard to such additional pumps and tanks, Phillips reserves the right to require that the Phillips lessee dealer extend the existing insurance coverage to include such additional pumps and tanks or obtain additional insurance in an additional amount acceptable to Phillips and with such additional coverage which is also acceptable to Phillips. Phillips, at its own discretion, may also require that the Phillips lessee dealer provide proof of payment of the premiums relating to any such additional insurance coverage including, but not limited to, pollution liability and environmental impairment liability insurance;

(i) In using and maintaining the additional pumps and tanks, the Phillips lessee dealer shall comply with all applicable laws and regulations;

(j) In the event of any leak into the environment from such additional pumps and/or tanks, or the use of such additional pumps and/or tanks in a manner which is otherwise unsafe or prohibited by applicable law or regulation, the Phillips lessee dealer shall immediately cease using such additional pumps and tanks and shall immediately, at the Phillips lessee dealer's sole cost and expense, correct any such problems. Upon such correction, the Phillips lessee dealer may resume using such additional pumps and tanks;

(k) Consistent with the terms and conditions set forth in any dealer agreement (lease) and/or reseller's contract between Phillips and the Phillips lessee dealer, the Phillips lessee dealer shall indemnify and hold Phillips harmless against all claims of any kind, including cleanup costs, resulting from or arising out of the Phillips lessee dealer's purchasing, handling, storage, distribution, allocation, dispensing, pricing and/or sale of any non-Phillips automotive motor fuel at the leased premises;

(l) With regard to alterations and restorations of the premises, the Phillips lessee dealer shall comply with all terms and provisions contained in the dealer agreement (lease) between Phillips and the Phillips lessee dealer;

(m) Any restoration or repair of the premises by the Phillips lessee dealer shall be done in a workmanlike and structurally-sound manner and shall comply with all applicable laws and regulations;

(n) If Phillips does not own the service station premises in fee but leases the land, the station or both from a third-party, any installation and/or operation by the Phillips lessee dealer of such additional pumps and tanks shall be subject to all the terms set forth in paragraphs 5(a) through 5(m) above and also to the Phillips lessee dealer's obtaining all necessary consents which may be required by Phillips' lessor. In the event that Phillips' rent to the lessor or from the Phillips lessee dealer is based upon gallonage sold at the service station, the Phillips lessee dealer shall also execute any required verification as to sales of non-Phillips automotive motor fuel; and

(o) The Phillips lessee dealer shall take all lawful steps required by Phillips to protect Phillips' trademarks.

6. As used herein, the following definitions shall apply:

(a) ''Lessee dealer(s)'' shall mean each person or entity within the United States who has leased from one or more of the defendants a branded gasoline service station for the sale at retail of automotive motor fuel under his lessor's trademark and has had a contract with his lessor for the purchase of automotive motor fuels for sale at retail under any of the lessor's trademarks at any time from May 11, 1967 to the present. The term ''lessee dealer'' shall encompass all ''Plaintiffs''.

(b) ''Phillips lessee dealer(s)'' shall mean a lessee dealer within the United States who has leased (or, in the case of the Rule 23(b)(2) class, is leasing) a gasoline service station from Phillips for the sale at retail of Phillips branded automotive motor fuels and who also had a contract (or, in the case of the Rule 23(b)(2) class, has a contract) with Phillips for the purchase of Phillips branded automotive motor fuels for sale at retail at any time from May 11, 1967 to the present. The term ''Phillips lessee dealer'' does not include or refer to jobbers or wholesale distributors of automotive motor fuel; persons who lease a station from jobbers or wholesale distributors or other third parties; persons who own or lease from third parties the gasoline service station and receive a flat rental or monthly accumulated gallonage rental from Phillips (lease-leaseback transactions); aviation fixed base operators; and marina outlets.

(c) ''Phillips trademark(s)'' shall mean any source marks, trademarks, tradenames, logos, emblems, dispensing pump designs, color combinations associated with Phillips branded automotive motor fuels brands or brandnames now owned or used, or which in the future may be owned or used, by Phillips in connection with its sale of branded automotive motor fuels.

(d) ''Phillips branded automotive motor fuel(s)'' shall mean any automotive motor fuel sold or provided by Phillips as branded Phillips automotive gasoline or automotive motor fuel. As between Phillips and Phillips lessee dealers, Phillips shall be the sole determiner of the specifications, grades, types and sources of ''Phillips branded automotive motor fuel.''

(e) ''Non-Phillips automotive motor fuel'' shall mean any automotive motor fuel not sold or provided by Phillips as Phillips branded automotive motor fuel.

7. The named Plaintiffs and all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed valid and timely elections to be excluded from the class (hereinafter collectively referred to in this paragraph as the ''releasing parties'') hereby release and forever discharge Phillips and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as ''the released parties'') from any and all liabilities, claims, indebtedness and causes of action, whether at law or in equity, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, and the releasing parties (and each of them) shall be barred from prosecuting any claims against the released parties, or any one of them, which were alleged or could have been alleged by the releasing parties, or any one of them, against the released parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in Plaintiffs' Preliminary Statement of Claim or the Amended Complaints or Plaintiffs' Pretrial Memorandum, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 14 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Phillips and the other released parties expressly released in this paragraph.

8. The named Plaintiffs and all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions (hereinafter collectively referred to in this paragraph as the ''releasing parties'') hereby release and forever discharge Phillips and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as ''the released parties'') from any and all liabilities, claims, and causes of action for injunctive or declaratory relief arising under the antitrust or trademark laws of the United States or of any state, including without limitation, any claims for injunctive or declaratory relief set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, and the releasing parties (and each of them) shall be barred from prosecuting any claims for injunctive or declaratory relief against the released parties, or any of them, which were alleged or could have been alleged by the releasing parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim for injunctive or declaratory relief set forth in Plaintiffs' Preliminary Statement of Claim or the Amended Complaints or Plaintiffs' Pretrial Memorandum, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 14 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Phillips and the other released parties expressly released in this paragraph.

9. This Settlement Agreement has been executed for the respective parties hereto, by counsel for Plaintiffs and by counsel for Phillips, and without trial or adjudication of any issue of fact or law raised by the complaints and answers, and shall not be construed as an admission by any party with respect to any such issue of fact or law and shall not be considered as evidence in this litigation on behalf of any non-settling defendant. Provided, however, that Plaintiffs agree that if Phillips complies with the terms of this Settlement Agreement, plaintiffs will not assert against Phillips that the practices, policies and procedures of Phillips with respect to Phillips lessee dealers and with respect to lessee

dealers: a) violate the antitrust laws and trademarks laws of the United States or any state, or (b) are or will be grounds for any claims thereunder against Phillips.

10. Nothing in this Settlement Agreement shall in any way impair or limit any lawful right that Phillips may have, by contract, statute or otherwise, to terminate, modify or refuse to renew any of its reseller's contracts or dealer agreements (lease) with Phillips lessee dealers.

11. It is the intention of the parties hereto that this Settlement Agreement will not only end the present litigation but also will prevent future litigation by lessee dealers (including Phillips lessee dealers) against Phillips arising out of Phillips' present marketing policies, practices and procedures.

12. Upon execution of this Settlement Agreement, Phillips shall pay to counsel for Plaintiffs the total sum of $647,500.00 (the "Settlement Sum"). The "Settlement Sum" shall be held in escrow by counsel for Plaintiffs pursuant to order of the Court and shall be placed in an interest-bearing account. The Settlement Sum shall be the only amount Phillips is required to pay pursuant to this Settlement Agreement or pursuant to any judgment(s) subsequently entered in this litigation. Phillips shall not be liable for any costs or attorneys' fees, expenses, escrow agents' fees or expenses, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum. At such time as any portion of the Settlement Sum is distributed to the named plaintiffs or members of the classes, each check making such distribution shall have the following legend on its face: "In consideration of the releases contained in the Settlement Agreement and approved by the Court in Bogosian, et al. v. Gulf Oil Corp., et al., Civil Class Action Nos. 71-1137 and 71-2543 (E.D. Pa.)"

13. Plaintiffs may, subject to the approval of the Court, use a maximum of 3% out of the Settlement Sum for purposes of paying the costs of giving notice to the classes of the settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 22 of this Settlement Agreement, any portion of the Settlement Sum actually disbursed to pay such costs of notice shall not be refundable to Phillips.

14. The parties agree that, subject to the provisions of paragraphs 7 and 8 as to non-settling defendants, the above-captioned actions shall be dismissed with prejudice as to Phillips and a judgment shall be entered in favor of Phillips in both actions. Final judgment in favor of Phillips as set forth in Exhibit A shall be entered by the District Court in both actions at the time of final approval of this Settlement Agreement.

15. The proposed notice to the classes advising the classes of this Settlement Agreement shall be submitted to counsel for Phillips for review and approval prior to submission of the notice to the District Court. In the event of a dispute between counsel for Phillips and counsel for Plaintiffs, both as to the form and substance, the District Court will resolve such dispute. Plaintiffs and Phillips shall apply to the Court for an Order requiring all defendants (including Sun and Getty) to provide Plaintiffs with lists of their current lessee dealers. Except as set forth in the following sentence of this paragraph, Phillips shall not pay the costs of obtaining or preparing any such lists of current lessee dealers. Phillips shall supply a list of current Phillips lessee dealers (or the best information available) at its sole cost and expense.

16. Plaintiffs agree that in consideration for the payment by Phillips of the Settlement Sum set forth in paragraph 12 of this Settlement Agreement, if Plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of said final judgment shall be reduced by the greater of:

(a) the amount of the Settlement Sum; or

(b) an amount equal to 2.59% of the dollar amount of said final judgment (or judgments).

It is agreed that this and only this paragraph 16 is provided for the benefit of all defendants (other than Sun and Getty), and any defendant (other than Sun or Getty) may enforce this and only this paragraph 16 against Plaintiffs, provided, however, that Phillips' rights under this paragraph are in addition to its rights under the other provisions of this Settlement Agreement.

17. Phillips and Plaintiffs agree that Phillips shall not have any responsibility for any allocation of the Settlement Sum among members of the class.

18. Immediately after conclusion of this litigation, Plaintiffs and Plaintiffs' counsel shall return to Phillips all copies of all documents produced by Phillips to Plaintiffs or to Plaintiffs' counsel or to any of Plaintiffs' experts (including all copies of documents in the possession of Plaintiffs' experts or any other person or entity and including all copies of all Phillips documents marked as deposition exhibits) except those containing Plaintiffs counsels' work product or Plaintiffs experts' work product. "Return" shall mean making said documents available to Phillips at the offices of Berger & Montague. Plaintiffs' counsel and Plaintiffs' experts shall, at the conclusion of this litigation, also immediately destroy any and all Phillips documents containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any documents produced by Phillips. In addition, at the conclusion of this litigation, Plaintiffs and Plaintiffs' counsel shall immediately comply with the present provisions of Paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph 15 of the Class Action Order No. 67 whether or not such Class Action Orders are subsequently vacated or amended. Plaintiffs and Plaintiffs' counsel shall certify in writing to counsel for Phillips that Plaintiffs and Plaintiffs' experts and Plaintiffs' counsel have complied with this paragraph. Immediately upon the execution of this Agreement, Phillips shall have no obligation to provide any further discovery or to participate in pretrial proceedings in these actions. However, Phillips agrees to cooperate with Plaintiffs to obtain court approval of this settlement. The attendance of any Phillips employees at the trial of these actions shall only be pursuant to a subpoena under Rule 45 of the Federal Rules of Civil Procedure.

19. Immediately after conclusion of this litigation, Phillips shall return to counsel for Plaintiffs all copies of all documents in Phillips' or Phillips' counsel's possession which were produced in discovery proceedings in this litigation: a) by either named Plaintiff, b) by Plaintiffs' counsel, c) by any trial witness designated by Plaintiffs, or d) by any person or entity incident to the deposition of Kenneth Black (including all copies of documents in the possession of Phillips' experts or any other person or entity including all copies of all such documents marked as deposition exhibits) except those containing Phillips' counsel's work product or Phillips' experts' work product. "Return" shall mean

making said documents available at the offices of Montgomery, McCracken, Walker & Rhoads in Philadelphia, Pennsylvania. Phillips' counsel shall, at the conclusion of this litigation, also immediately destroy any and all documents in their possession produced in discovery proceedings in this litigation: a) by either named Plaintiff, b) by Plaintiffs' counsel, c) by any trial witness designated by Plaintiffs, or d) by any person or entity incident to the deposition of Kenneth Black containing work product and other documents (other than public documents and documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any such documents. Phillips and Phillips' counsel shall certify in writing to Plaintiffs' counsel that Phillips and Phillips' counsel have complied with this paragraph.

20. This Settlement Agreement is expressly conditioned upon, *inter alia*, the Court entering a Consent Decree and Judgment in the exact form set forth in Exhibit A to this Settlement Agreement.

21. Unless a change in circumstances occurs (it being understood by Plaintiffs and Phillips that no change in circumstances can occur prior to the commencement of trial) which has material adverse effect on Plaintiffs' claims against any non-settling defendant, Plaintiffs will not settle on behalf of the Rule 23(b)(3) class with any non-settling defendant on terms more favorable to that defendant than to Phillips unless said more favorable terms are also immediately offered to Phillips by Plaintiffs. If Phillips accepts said offer, this Settlement Agreement (including, if necessary, Exhibit A) will be amended accordingly.

A. ''Non-settling defendant'', as used herein, includes the following defendants:

Amerada Hess Corporation
American Oil Company
Atlantic Richfield Company
BP Oil, Inc.
Chevron, U.S.A.
Exxon Corporation
Gulf Oil Corporation
Mobil Oil Company
Shell Oil Company
Texaco, Inc.
Union Oil Company of California

B. It is understood that with respect to a monetary settlement, Plaintiffs will not, unless Plaintiffs follow the procedures set forth in the second sentence of this paragraph 21B, accept from any defendant an amount in settlement less than that defendant's percentage share under the Defendants' Sharing Agreement as applied to a total sum of $25 million, and that such monetary settlement satisfies the intent of this paragraph 21B. If Plaintiffs do accept a lesser sum than that resulting from the formula described in the preceding sentence, Plaintiffs will immediately refund to Phillips a pro rata portion of the Settlement Sum paid by Phillips.

22. In the event that the Court denies complete approval of this Settlement Agreement or completely approves it but is reversed on appeal, or should the Consent Decree contemplated hereby not be made in the exact form set forth in Exhibit A or be made but be reversed or modified on appeal, then this entire Settlement Agreement shall terminate unless all parties promptly agree to proceed with this Settlement Agreement and/or Consent Decree as proposed to be modified by the District Court or the Appellate Court. In the event this Settlement Agreement is terminated pursuant to this paragraph, the Settlement Sum (less a maximum of 3%, if previously disbursed incident to giving notice to the classes) plus any accrued interest shall be immediately returned to Phillips. In the event that the Court grants approval and enters the Consent Decree in the form attached as Exhibit A and in the event that the Consent Decree (Exhibit A) becomes final and non-appealable, then the Settlement Sum (less any disbursements made incident to giving notice to the classes) may be removed from escrow by counsel for Plaintiffs subject to further Order of the Court.

23. This Settlement Agreement contains a full, complete, and integrated statement of each and every term and provision agreed to by and among the parties hereto. No term or provision in any settlement agreement entered into between Plaintiffs and any other defendant with respect to this litigation shall affect this Settlement Agreement (except as provided in paragraph 21 above) or the interpretation thereof. The terms and provisions of this Settlement Agreement shall not be orally modified in any respect, and can be modified only by the written agreement of the parties hereto.

24. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of law rules of the Commonwealth of Pennsylvania.

[SIGNATURES OMITTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN, *et al.*, : CIVIL CLASS ACTION

Class Representatives,

v.

GULF OIL CORPORATION, *et al.*, NOS. 71-1137
71-2543

Defendants.

SETTLEMENT AGREEMENT

(SHELL)

This Settlement Agreement is made this 21st day of September, 1984, by and between Shell Oil Company (being hereinafter referred to as "Shell" and more fully defined in paragraph 7(g), below) and named plaintiffs Paul J. Bogosian and Louis J. Parisi, both individually and on behalf of: (a) all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed timely and valid elections to be excluded from the class, and (b) all members of the Rule-23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions. Such members of both classes, including the named plaintiffs, are hereinafter collectively referred to as "plaintiffs."

WHEREAS, the two above-captioned actions have been instituted against Amerada Hess Corporation, Amoco Oil Company, Atlantic Richfield Company, BP Oil Inc., Chevron Oil Company, Cities Service Company, Exxon Corporation, Getty Oil Company, Gulf Oil Corporation, Mobil Oil Corporation, Phillips Petroleum Company, Shell Oil Company, Sun Oil Company, Texaco Inc. and Union Oil Company of California ("defendants"), alleging a conspiracy or conspiracies in violation of Section 1 of the Sherman Act; and

WHEREAS, Shell has answered the complaints and amended complaints and has raised defenses and affirmative defenses to all allegations, and

WHEREAS, Shell asserts that its practices, policies and procedures are lawful and reasonable, and Shell denies that it has (or had) entered into any conspiracy (or conspiracies) and denies that it has violated the antitrust laws; and

WHEREAS, Shell has treated Shell lessee dealers as independent businessmen and Shell asserts that the leases and motor fuel sales contracts entered into by Shell with Shell lessee dealers have not required the Shell lessee dealers to purchase any motor fuel from Shell; and

WHEREAS, the parties hereto desire amicably to resolve their disputes without the necessity for a lengthy and costly trial;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The provisions of this Settlement Agreement applicable to and binding upon Shell shall remain in effect for five (5) years from the date hereof and shall apply only to the operations of Shell within the United States. Following said five (5) year period, Shell shall have no further obligations pursuant to this Settlement Agreement or pursuant to any Consent Decree entered pursuant to this Settlement Agreement.

2. Shell agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of motor fuel which Shell lessee dealers may offer for sale or with respect to Shell's contractual and lease provisions with Shell lessee dealers. The foregoing agreement does not constitute and shall not be construed as an admission or evidence of any past or present wrongdoing or violation of law by Shell, and Shell specifically denies any such wrongdoing or violation of law.

3. Shell agrees that the express terms of its leases and motor fuel sales contracts with Shell lessee dealers, whether taken individually or together, do not and shall not require any Shell lessee dealer to purchase his entire requirement of motor fuel from Shell. Shell shall, however, continue to have the right:

(a) to protect Shell's trademarks by, *inter alia*, requiring that any motor fuel sold by the Shell lessee dealer, which is non-Shell motor fuel, not be sold under the Shell trademark;

(b) to require Shell lessee dealer to maintain and continue to dispense a representative amount of Shell motor fuels, as defined in paragraph 7(f) below, for resale to the public from pumps bearing Shell's trademark; and

(c) to be indemnified and held harmless by the Shell lessee dealer against all claims of any kind for injury or loss resulting from or arising out of the Shell lessee dealer's handling, storage, dispensing and/or sale of any non-Shell motor fuel at the leased premises.

4. For purposes of discharging its agreements and exercising its rights under paragraph 3, above, Shell, at its discretion and option, on a station by station basis or otherwise, and with respect to each Shell lessee dealer, shall have the right to either:

(a) provide a Shell lessee dealer, at the dealer's sole cost and expense, with the opportunity to de-identify his station in a manner designated by Shell in order to avoid any deception or likelihood of confusion to the public as to the origin or source of the motor fuels offered for sale in compliance with the Lanham Act. Moreover, Shell shall also have the right, at its discretion and option, to modify and interconnect the existing tank and pump system at any station leased by a Shell lessee dealer so as to maintain aggregate storage and delivery capacities for Shell motor fuels; or

(b) provide a Shell lessee dealer with the opportunity to add additional pumps and tanks, in accordance with the procedures and limitations prescribed in paragraph 6, below.

5. In any event, and in furtherance of paragraphs 3 and 4 above:

(a) Shell shall have the right, in addition to other contractual and legal rights, to restrict the size and the location of any signs displayed at the leased premises which advertise the sale of non-Shell motor fuels; to require that the Shell lessee dealer adequately display signs to clearly indicate that such motor fuels are other than Shell motor fuels; and to otherwise restrict the display or use of the Shell trademark in connection with the sale of non-Shell motor fuel;

(b) the Shell lessee dealer shall take all steps required by Shell to protect Shell's trademarks so long as said steps are not prohibited by law; and the Shell lessee dealer shall comply with the Lanham Act and all applicable federal, state and local statutes, ordinances or regulations governing the labelling or identification of motor fuels;

(c) Shell shall have the right, at its sole discretion and option, to deny the use of the Shell credit card and other Shell-authorized credit cards in connection with any sale of non-Shell motor fuel or to impose a credit card service charge in connection with any such sale;

(d) in connection with any non-Shell motor fuels dispensed by Shell lessee dealers, Shell will not accept any liability to the lessee dealer, the public or to any governmental entity, nor will Shell have any responsibility to comply with applicable statutes and regulations governing the storage, sale, certification, grade, and octane or price posting of such motor fuels;

(e) upon cessation of the sale of any non-Shell motor fuel by the Shell lessee dealer, the dealer shall, at his sole cost and expense and in accordnace with Shell's reasonable requirements, purge affected storage tanks, piping and related equipment of such non-Shell motor fuel and convert such tanks and equipment for use in the sale of Shell motor fuel; and

(f) in the event that Shell's rent to the lessor (where Shell does not own the service station premises in fee but leases the land, the station or both from the lessor) or Shell's rent from the Shell lessee dealer is based on the gallonage sold to or at the service station, the Shell lessee dealer shall execute any required verification as to purchases or sales of non-Shell motor fuel.

6. For purposes of discharging its agreements and exercising its rights under paragraph 3, above, if Shell, in its sole discretion, chooses to allow a Shell lessee dealer to install additional pumps and tanks at his leased service station for the purpose of selling non-Shell motor fuel, Shell may reasonably withhold its consent (and still have met all of its obligations under paragraph 3, above) unless the Shell lessee dealer complies with the following procedures.

(a) Any installation of pumps and tanks to dispense non-Shell motor fuel shall be at the sole cost and expense of the Shell lessee dealer and pursuant to plans and specifications previously approved in writing by Shell. Shell shall not unreasonably withhold its consent to such plans and specifications, but Shell may require that the proposed installation be workmanlike and structurally sound, comply with all applicable laws and regulations, and not unreasonably interfere with the use of Shell's existing facilities and access to pumps dispensing Shell motor fuel. The Shell lessee dealer at his sole expense shall obtain and maintain at all times during the installation work (i) workmen's compensation insurance in statutory limits for all eligible workmen engaged in the installation work, (ii) public liability insurance, in which Shell shall be among the named insureds, for bodily injury and death, and property damage with the coverage limits that each Shell lessee dealer is then required to carry, (iii) builder's all risk insurance in an amount equal to the value of the completed installation, and (iv) if required by Shell, a completion bond and/or a payment and performance bond for the installation work with a surety or sureties satisfactory to Shell, guaranteeing completion of the installation work, as described by the installation plans within forty-five days of the commencement of the actual work (acts of God excepted), providing for the removal of all work and the restoration of the property to its pre-existing state within such forty-five day period should the Shell lessee dealer abandon or be unable to complete the installation work and providing for the removal of or indemnity against liens or claims arising from the installation work. The Shell lessee dealer shall submit to Shell evidence of such coverage and bond, if required, prior to commencing the installation work. Such additional pumps and tanks shall be maintained by the Shell lessee dealer at the Shell lessee dealer's sole cost and expense. In the event of any leak into the environment from such additional pumps and/or tanks, or the use of such additional pumps and/or tanks in a manner which is otherwise unsafe or prohibited by applicable laws or regulation, the Shell lessee dealer shall immediately cease using such additional pumps and tanks and shall immediately, at his sole cost and expense, correct all such problems. Upon such correction, the Shell lessee dealer may resume using such additional pumps and tanks. In using and maintaining the additional pumps and tanks, the Shell lessee dealer shall comply with all applicable laws and regulations and shall indemnify and hold Shell harmless against all claims of any kind for injury or loss resulting from or arising out of the Shell lessee dealers' handling, storage, dispensing and/or sale of any non-Shell motor fuel at the service station. The Shell lessee dealer shall, at his sole cost and expense, include the additional pumps and tanks within the insurance coverage that each Shell lessee dealer is otherwise required to carry, including, but not limited to, pollution liability and environmental impairment liability insurance.

(b) If Shell does not own the service station premises in fee but leases the land, the station or both from a third-party, any installation and/or operation by the Shell lessee dealer of such additional pumps and tanks shall be subject to the Shell lessee dealer's obtaining all necessary consents which may be required by Shell's lessor, and the Shell lessee dealer shall, at Shell's discretion and option, and at the sole cost and expense of the dealer, remove such tanks and pumps at the expiration of the Shell lessee dealer's lease with Shell unless prohibited by Shell's lease with Shell's lessor or by a requirement imposed by Shell's lessor on the lessee dealer.

7. As used herein, the following definitions shall apply:

(a) ''lessee dealer(s)'' shall mean each person or entity within the United States who has leased a gasoline service station for the sale at retail of motor fuel under his lessor's trademark and has purchased motor fuels from the lessor for sale at retail under any of the lessor's trademarks at any time from May 11, 1967 to the present.

(b) ''Shell lessee dealer(s)'' shall mean a lessee dealer within the United States who has leased a gasoline service station from Shell for the sale at retail of motor fuel and purchased motor fuel from Shell for sale at retail under Shell's trademarks at any time from May 11, 1967 to the present. The term shall not include the dealer at any station thereafter sold by Shell.

(c) ''Shell trademark(s)'' shall mean any trademarks, trade names, brand names, service marks or color schemes now used, or which in the future may be used, by Shell in connection with the sale of Shell motor fuels.

(d) ''Shell motor fuel(s)'' shall mean any gasoline or other motor fuel sold or delivered or otherwise made available by Shell to a Shell lessee dealer as Shell branded gasoline or motor fuel. As between Shell and Shell lessee dealers, Shell shall be the sole determiner of the specifications, grades, types and sources of ''Shell motor fuel.''

(e) ''Non-Shell motor fuel(s)'' shall mean any motor fuel not sold by Shell to a lessee dealer as Shell motor fuel.

(f) A ''representative amount of Shell motor fuels,'' as used both herein and in Shell's leases or motor fuels sales contracts with the Shell lessee dealers, shall mean a sufficient amount by each grade and type of motor fuel offered to the dealer by Shell so that the Shell lessee dealer shall always have each grade and type available for resale.

(g) ''Shell'' shall mean Shell Oil Company, its predecessors, successors, subsidiaries, divisions and affiliates selling motor fuel to Shell lessee dealers within the United States.

(h) ''United States'' shall mean the 50 states and the District of Columbia.

8. The named plaintiffs and all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed valid and timely elections to be excluded from the class (hereinafter collectively referred to in this paragraph as the ''releasing parties'') hereby release and forever discharge Shell and its past and present directors, officers, agents and employees (hereinafter collectively referred to as ''the released parties'') from any and all liabilities, claims, indebtedness and causes of action, whether at law or in equity, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the Complaints, Amended Complaints, Plaintiffs' Preliminary Statement of Claim, or Plaintiffs' Pretrial Memorandum, and the releasing parties (and each of them) shall be barred from prosecuting any claims against the released parties, or any one of them, which were alleged or could have been alleged by the releasing parties, or any one of them, against the released parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including without limitation, any claim set forth in Plaintiffs' Preliminary Statement of Claim, Plaintiffs' Pretrial Memorandum or the Complaints or Amended Complaints, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraphs 15 and 22 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Shell and the other released parties expressly released in this paragraph.

9. The named plaintiffs and all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions (hereinafter collectively referred to in this paragraph as the ''releasing parties'') hereby release and forever discharge Shell and its past and present directors, officers, agents and employees (hereinafter collectively referred to as ''the released parties'') from any and all liabilities, claims, and causes of action for injunctive or declaratory relief arising under the antitrust or trademark laws of the United States or of any state, including without limitation, any claims for injunctive or declaratory relief set forth in the Complaints, Amended Complaints, Plaintiffs' Preliminary Statement of Claim, or Plaintiffs' Pretrial Memorandum, and the releasing parties (and each of them) shall be barred from prosecuting any claims for injunctive or declaratory relief against the released parties, or any of them, which were alleged or could have been alleged by the releasing parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim for injunctive or declaratory relief set forth in Plaintiffs' Preliminary Statement of Claim, Plaintiffs' Pretrial Memorandum or the Complaints or Amended Complaints, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraphs 15 and 22 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Shell and the other released parties expressly released in this paragraph.

10. This Settlement Agreement shall not be considered as evidence in this litigation on behalf of any non-settling defendant. Provided, however, in light of the terms and conditions of paragraphs 1 to 7 of this Settlement Agreement and paragraphs 5 to 11 of the Consent Decree (Exhibit A), plaintiffs agree that Shell's present practices, policies and procedures with respect to Shell lessee dealers or lessee dealers do not violate the antitrust or trademark laws of the United States or any state, and that if Shell complies with the terms of this Settlement Agreement and the Consent Decree (Exhibit A), Shell's practices, policies and procedures as provided for therein do not violate the antitrust or trademark laws of the United States or any state. If Shell complies, plaintiffs agree that they will not assert that Shell's policies, practices and procedures with respect to Shell lessee dealers or lessee dealers (a) violate the antitrust or trademark laws of the United States or any state, or (b) are or will be grounds for any claims thereunder against Shell.

11. Shell shall have the right, consistent with applicable statutes, and upon written notice given in accordance with applicable statute or regulation, to terminate the lease and motor fuel sales contract of any Shell lessee dealer who fails to observe and comply with the conditions, including the definitions, set forth in this Settlement Agreement. In addition, nothing in this Settlement Agreement shall in any

way impair or limit any lawful right that Shell may have, by contract, statute or otherwise, to terminate, modify or refuse to renew any of its contracts or leases with Shell lessee dealers.

12. It is the intention of the parties hereto that this Settlement Agreement will not only end the present litigation but also will prevent future litigation by lessee dealers (including Shell lessee dealers) against Shell arising out of Shell's present marketing policies, practices and procedures or any future marketing policies, practices and procedures which comply with the terms of this Settlement Agreement.

13. Upon execution of this Settlement Agreement, Shell shall pay to counsel for the plaintiffs the total sum of $3,727,500 (the "Settlement Sum"). The Settlement Sum shall be held in escrow by counsel for plaintiffs pursuant to order of the Court and shall be placed in an interest-bearing account. The Settlement Sum shall be the only amount Shell is required to pay pursuant to this Settlement Agreement or pursuant to any judgment(s) subsequently entered in this litigation. Shell shall not be liable for any costs or attorneys' fees, expenses, escrow agent's fees or expenses, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum. At such time as any portion of the Settlement Sum is distributed to the named plaintiffs or members of the classes, each check making such distribution shall have the following legend on its face: "In consideration of the applicable releases provided for in the Settlement Agreements approved by the Court in Bogosian, et al. v. Gulf Oil Corp., et al., Civil Class Action Nos. 71-1137 and 71-2543 (E.D. Pa.)"

14. Plaintiffs may, subject to the approval of the Court, use a maximum of 3% of the Settlement Sum for the purpose of paying the costs of giving notice to the classes of the settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 22 of this Settlement Agreement, any portion of the Settlement Sum actually disbursed to pay such costs of notice (up to a maximum of 3% of the Settlement Sum) shall not be refundable to Shell.

15. The parties agree that, subject to the provisions of paragraphs 8 and 9 as to non-settling defendants, the above-captioned actions shall be dismissed with prejudice as to Shell. Final judgment in favor of Shell as set forth in Exhibit A shall be entered by the District Court in both actions at the time of final approval of this Settlement Agreement.

16. The proposed notice to the classes advising the classes of this Settlement Agreement shall be submitted to counsel for Shell for review and approval prior to submission of the notice to the District Court. In the event of any dispute between counsel for Shell and counsel for plaintiffs as to the form or substance of the notice, the District Court will resolve the dispute. Plaintiffs and Shell shall apply to the Court for an Order requiring all defendants (including Sun and Getty) to provide plaintiffs with lists of their current lessee dealers. Shell shall not pay the costs of obtaining or preparing any such lists of current lessee dealers, except that Shell shall supply a list of current Shell lessee dealers (or the best information available) at its sole cost and expense.

17. Plaintiffs agree that in consideration for the payment by Shell of its share of the Settlement Sum set forth in Paragraph 13 of this Settlement Agreement, if plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of said final judgment (or judgments) shall be reduced by the greater of:

(a) the amount of the Settlement Sum, or

(b) an amount equal to 14.91% of the dollar amount of said final judgment (or judgments).

It is agreed that this and only this paragraph 17 is provided for the benefit for all defendants (other than Sun and Getty), and any defendant (other than Sun or Getty) may enforce this and only this paragraph 17 against plaintiffs, provided, however, that Shell's rights under this paragraph are in addition to its rights under the other provisions of this Settlement Agreement.

18. Shell and plaintiffs agree that Shell shall not have any responsibility for any allocation of the Settlement Sum among members of the class.

19. Immediately after conclusion of this litigation, plaintiffs' counsel shall return to Shell all copies of all documents produced by Shell to plaintiffs or to plaintiffs' counsel and copies of all deposition transcripts of all present or former Shell employees (including copies of documents or deposition transcripts in the possession of plaintiffs' experts or any other person or entity and including all copies of all Shell documents marked as deposition exhibits) except those containing the plaintiffs' counsels' work product or plaintiffs' experts' work product. "Return" shall mean making said documents and deposition transcripts available to Shell at the offices of Berger & Montague. Plaintiffs' counsel and plaintiffs' experts shall, at the conclusion of this litigation, also immediately destroy any and all Shell documents or deposition transcripts containing work product and other documents and deposition transcripts (other than public documents or documents filed in this litigation under seal), including documents or deposition transcripts containing work product, that contain extracts, quotations or other references from any documents produced by Shell or from any deposition transcripts of present or former Shell employees. In addition, at the conclusion of this litigation, plaintiffs and plaintiffs' counsel shall immediately comply with the present provisions of paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph 15 of Class Action Order No. 67 whether or not such Class Action Orders are subsequently vacated or amended. Plaintiffs' counsel shall certify in writing to Shell's counsel that the named plaintiffs, plaintiffs' counsel and plaintiffs' expert witnesses have complied with this paragraph. Immediately upon the execution of this Settlement Agreement, Shell shall have no obligation to provide any further discovery or to participate in pretrial proceedings in these actions. However, Shell agrees to cooperate with plaintiffs to obtain court approval of this settlement. The attendance of any Shell employees at the trial of these actions shall only be pursuant to a subpoena in compliance with Rule 45 of the Federal Rules of Civil Procedure.

20. Immediately after conclusion of this litigation, Shell shall return to counsel for plaintiffs all copies of all documents in Shell's or Shell's counsel's possession which were produced in discovery proceedings in this litigation: (a) by either named plaintiff; (b) by plaintiffs' counsel; (c) by any trial witness designated by plaintiffs; or (d) by any person or entity incident to the deposition of Kenneth Black; and copies of all deposition transcripts of the named plaintiffs, plaintifffs' expert witnesses or Messrs. Black, Burton, Byron and Comly (including copies of documents or deposition transcripts of any of the above in the possession of Shell's experts or any other person or entity and including all copies of all such documents marked as deposition exhibits), except those containing Shell's counsel's work product or Shell's experts'

work product. Shell shall also return to counsel for Sun all copies in Shell's possession of the documents produced at the depositions of Messrs. Burton and Comly. "Return" shall mean making said documents and deposition transcripts available at the offices of Howrey & Simon. Shell's counsel shall, at the conclusion of this litigation, also immediately destroy any and all documents in their possession produced in this litigation: (a) by either named plaintiff; (b) by plaintiffs' counsel; (c) by any trial witness designated by plaintiffs; (d) by any person or entity incident to the deposition of Kenneth Black; or (e) by counsel for Sun at the Comly or Burton deposition containing work product and other documents and deposition transcripts (other than public documents or documents filed in this litigation under seal), including documents or deposition transcripts containing work product, that contain extracts, quotations or other references from any such documents or from the deposition transcripts of plaintiffs and plaintiffs' expert witnesses. Shell's counsel shall certify in writing to plaintiffs' counsel that Shell and Shell's counsel have complied with this paragraph.

21. This Settlement Agreement is expressly conditioned upon, *inter alia*, the Court entering a Consent Decree and Judgment in the exact form set forth in Exhibit A to this Settlement Agreement.

22. (a) Unless subsequent change in circumstances occurs which has material adverse effect on plaintiffs' claims against any non-settling defendant, plaintiffs will not settle with any non-settling defendant on terms substantially more favorable to that defendant than to Shell unless said more favorable terms are also immediately offered to Shell by plaintiffs. If Shell accepts said offer, this Settlement Agreement (including, if necessary, Exhibit A) will be amended accordingly. If the parties hereto cannot agree whether the terms offered to a non-settling defendant are "substantially more favorable to that defendant than to Shell," the dispute will be submitted to the District Court for binding resolution.

(b) "Non-settling defendant," as used herein, is limited to the following defendants:

American Oil Company
Atlantic Richfield Company
Chevron, U.S.A.
Exxon Corporation
Gulf Oil Corporation
Mobil Oil Company
Texaco, Inc.
Union Oil Company of California
Phillips Petroleum Company
BP Oil, Inc.

(c) It is understood that with respect to a monetary settlement, plaintiffs will not, unless plaintiffs follow the procedures set forth in the second sentence of this paragraph 22(c), accept in settlement less than that settling defendant's percentage share under the Defendants' Sharing Agreement as applied to a total sum of $25 million, and that such a monetary settlement satisfies the intent of this paragraph 22. If plaintiffs do accept a lesser sum than that resulting from the formula described in the preceding sentence, plaintiffs will immediately refund to Shell a pro rata portion of the Settlement Sum paid by Shell.

23. In the event that the Court denies complete approval of this Agreement or completely approves it but is reversed on appeal, or should the Consent Decree contemplated hereby not be made in the exact form set forth in Exhibit A or be made but be reversed or modified on appeal, then this entire Settlement Agreement shall terminate unless all parties promptly agree to proceed with this Settlement Agreement and/or Consent Decree as proposed to be modified by the District Court or the Appellate Court. In the event this Settlement Agreement is terminated pursuant to this paragraph, Shell's share of the Settlement Sum (less a maximum of 3% of Shell's share of the Settlement Sum, if previously disbursed incident to giving notice to the classes), plus any accrued interest, shall be immediately returned to Shell. In the event that the Court grants approval and enters the Consent Decree in the form attached as Exhibit A and in the event that the Consent Decree (Exhibit A) becomes final and nonappealable, then the Settlement Sum may be removed from escrow by plaintiffs subject to further Order of the Court.

24. This Settlement Agreement contains a full, complete and integrated statement of each and every term and provision agreed to by and among the parties hereto. No term or provision in any settlement agreement entered into between plaintiffs and any other defendant with respect to this litigation shall affect this Settlement Agreement or the interpretation thereof. The terms and provisions of this Settlement Agreement are not severable. This Settlement Agreement shall not be orally modified in any respect, and can be modified only by the written agreement of the parties hereto.

[SIGNATURES OMITTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN, *et al.*, : CIVIL CLASS ACTION
Class Representatives, :
v. :
GULF OIL CORPORATION, *et al.*, : NOS. 71-1137
: 71-2543
Defendants. :

SETTLEMENT AGREEMENT

(TEXACO)

This Settlement Agreement is made this 21st day of September 1984, by and between Texaco Inc. (Texaco Inc. and its predecessors, subsidiaries, divisions and affiliates being hereinafter referred to as "Texaco") and named plaintiffs Paul J. Bogosian and Louis J. Parisi, both individually and on behalf of: (a) all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed timely and valid elections to be excluded from the class, and (b) all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions. Such members of both classes, including the named plaintiffs, are hereinafter collectively referred to as "plaintiffs".

WHEREAS, the two above-captioned actions have been instituted against Amerada Hess Corporation; Amoco Oil Company; Atlantic Richfield Company; BP Oil Inc.; Chevron Oil Company; Cities Service Company; Exxon Corporation; Getty Oil Company; Gulf Oil Corporation; Mobil Oil Corporation; Phillips Petroleum Company; Shell Oil Company; Sun Oil Company; Texaco Inc.; and Union Oil Company of California ("defendants"), alleging a conspiracy or conspiracies in violation of Section 1 of the Sherman Act; and

WHEREAS, Texaco has answered the complaints and amended complaints and has raised defenses and affirmative defenses to all allegations; and

WHEREAS, Texaco asserts that its practices, policies and procedures are lawful and reasonable, and Texaco denies that it has (or had) entered into any conspiracy (or conspiracies) and denies that it has violated the antitrust laws; and

WHEREAS, Getty Oil Company ("Getty") has previously entered into a settlement of this case and an order of the Court and consent decree ("Getty consent decree") has been entered on June 19, 1981 dismissing Getty from the case and enjoining Getty from certain practices and procedures, and

WHEREAS, since the entry of the Getty consent decree on June 19, 1981, Texaco has acquired 100% of the stock of Getty and is now the sole owner of Getty, and

WHEREAS, the parties desire that the provisions of this settlement and the proposed final order and consent decree with respect to Texaco shall also apply to Getty in lieu of the terms of the Getty consent decree, and

WHEREAS, the parties hereto desire amicably to resolve their disputes without the necessity for a lengthy and costly trial;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraphs 4, 5 and 6 of the Getty consent decree shall be vacated and in lieu thereof paragraphs 1a, 2, 3, 4, 5, 6, 7, 10, 11 and 12 of this settlement agreement shall apply to Getty.

1a. The provisions of this Settlement Agreement applicable to and binding upon Texaco shall remain in effect for five (5) years from the date hereof and shall apply only to the operations of Texaco, if any, in the fifty states of the United States and in the District of Columbia. Following said five (5) year period, Texaco shall have no further obligations pursuant to this Settlement Agreement or pursuant to the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement.

2. Texaco agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of motor fuel which Texaco lessee dealers may offer for sale or with respect to Texaco's contractual and lease provisions with Texaco lessee dealers. Agreement does not constitute an admission or evidence of any past or present violation of law by Texaco and shall not be construed as an admission or evidence of any past or present violation of law by Texaco.

3. Texaco further agrees that the express terms of its leases and motor fuel sales contracts with Texaco lessee dealers, whether taken individually or together, do not and shall not require any Texaco lessee dealer to purchase his entire requirement of motor fuel from Texaco. Nothing in this Settlement Agreement is intended to deny Texaco the continued right:

(a) to protect Texaco's trademarks by, *inter alia*, requiring that any motor fuel sold by Texaco lessee dealers, which is non-Texaco motor fuel, not be sold under Texaco trademarks or as Texaco motor fuel and to require the Texaco lessee dealers to adhere strictly to the terms of their contracts with Texaco and/or guidelines issued by Texaco to Texaco lessee dealers from time to time relating to the protection of Texaco's trademarks; and

(b) to require Texaco lessee dealers to comply strictly with the provisions of their leases and motor fuel sales contracts and other contracts with Texaco so long as said provisions are not in violation of the provisions of this Settlement Agreement; and

(c) to be indemnified and held harmless by the Texaco lessee dealer against all claims of any kind for injury or loss resulting from or arising out of the Texaco lessee dealer's handling, storage, dispensing and/or sale of any non-Texaco motor fuel at the leased premises. In this regard, any Texaco lessee dealer who offers for sale any non-Texaco motor fuel shall be required to sign an indemnity letter acknowledging these responsibilities; and

(d) to amend, at Texaco's discretion, Texaco's currently effective leases, motor fuel sales contracts, and other contracts with Texaco's lessee dealers so long as such amendments are not in violation of the provisions of this Settlement Agreement.

4. For purposes of discharging all of its obligations under paragraph 3, above, Texaco may, at its discretion and option, on a station by station basis or otherwise, and with respect to any one or more Texaco lessee dealers, either:

(a) allow Texaco lessee dealers to dispense motor fuels other than Texaco branded motor fuels out of existing Texaco tanks at the leased premises under the conditions set forth in paragraph 5 below, or

(b) allow the Texaco lessee dealers to add additional pumps and tanks, in accordance with the procedures and limitations prescribed in paragraph 5 and 6 below.

5. The following conditions shall apply at any Texaco station which dispenses non-Texaco motor fuels:

(a) The Texaco lessee dealer must maintain and continue to dispense a representative amount of Texaco branded motor fuels for resale to the public from pumps bearing Texaco's trademark.

(b) Motor fuels dispensed from pumps bearing Texaco's trademarks shall be "Texaco branded motor fuels."

(c) The lessee dealer may not remove, alter or debrand Texaco's brand identification except as provided in subparagraph (e) below.

(d) In storing and dispensing motor fuels which are not "Texaco branded motor fuels" the Texaco lessee dealer may employ existing underground tanks, submersible pumps and lines, provided that the non-Texaco branded motor fuels must at all times be segregated from "Texaco branded motor fuels."

(e) The Texaco lessee dealer must give Texaco reasonable advance notice in writing to enable Texaco, if it chooses, to remove its branded pumps at Texaco's expense. If Texaco does not remove the pumps within 60 days of such notice, the Texaco lessee dealer may use the pumps to dispense non-Texaco motor fuels provided the dealer debrands those pumps and covers the Texaco trademarks on them in accordance with such resonable requirements as Texaco may impose, including, covering the Texaco trademarks with a good quality removable durable sign which will clearly identify the pumps as dispensing non-Texaco motor fuel. The dealer shall pay the debranding costs.

(f) The lessee dealer will, if required by Texaco, supply, install and maintain the dispensing pumps, hoses, and nozzles used for dispensing motor fuels other than "Texaco motor fuels," and Texaco shall maintain the underground tanks, submersible pumps and lines used for such purpose at lessee dealer's expense.

(g) Texaco shall have the right reasonably to restrict the size and location of any signs displayed at the leased premises which advertise the sale of non-Texaco branded motor fuels and to require that the lessee dealer adequately display signs to clearly indicate that such motor fuels are other than Texaco branded motor fuels. Texaco shall have the right to require that any pump or container utilized in the marketing of non-Texaco branded motor fuels display thereon a sign or label notifying the public that motor fuels supplied therefrom are not products of Texaco, in order to clearly avoid any confusion or misunderstanding by the public as to the source, certification, sponsorship, or approval of such motor fuels. Such sign or label must be clearly visible to the public, must be at least eight inches by six inches in size, and must carry the following statement in type at least three inches in height:

THE PRODUCT SOLD FROM THIS PUMP IS NOT
SUPPLIED BY TEXACO

A "non-Texaco" pump is one that dispenses any motor fuel or blend of motor fuels other than Texaco motor fuels.

(h) Texaco will not accept any liability to the lessee dealer, the public or any government entity arising from the sale of non-Texaco gasoline sold by the dealer. The lessee dealer is responsible for any necessary octane posting changes on his pumps, and the gasoline sold to the public must conform to EPA lead content requirements. Any lessee dealer to whom this policy applies will be required to sign an indemnity letter acknowledging this responsibility. Refusal of a dealer to sign the indemnity letter shall not relieve him of the underlying responsibilities herein required.

(i) The lessee dealer may not, in the absence of Texaco's written consent, honor the Texaco credit card for sales of non-Texaco motor fuels. In the absence of Texaco's written consent, the Texaco credit card may only be honored for purchases from any remaining Texaco branded pumps. In transactions involving the sales of non-Texaco branded motor fuels and where Texaco has not given its written consent for the honoring of Texaco credit cards for the sale of non-Texaco products, the lessee dealer shall use a credit card invoice which does not display any Texaco trademark, trade name, brand or other Texaco identification. Likewise, the Texaco lessee dealer in soliciting business or billing for non-Texaco branded motor fuels shall not use any other invoice, stationery, or other Texaco identified documents which could have the effect of confusion to the customers as to the source or sponsorship of the product sold.

(j) Texaco shall have the right, consistent with applicable statutes and upon written notice given in accordance with applicable statute or regulation, to terminate the contract of any lessee dealer who fails to observe and comply with the foregoing conditions, including the definitions set forth in paragraph 7 of this Settlement Agreement. To this end, these conditions and definitions shall be applicable as of the date of the proposed Consent Decree to all present contracts with Texaco's lessee dealers and may be incorporated by Texaco in any future contracts between Texaco and its lessee dealers. The foregoing right shall not exclude, impair, or limit any other right Texaco may have to terminate or non-renew any of its contracts or leases consistent with applicable law.

(k) Where Texaco has an underlying lease calling for a gallonage rental or rental override, the Texaco lessee dealer must report his sales of non-Texaco motor fuels to Texaco in order that Texaco can determine the rent owed to the property owner. It is the responsibility of Texaco to contact the Texaco lessee dealer to determine the need for such reporting.

(l) Upon reasonable advance written notice to Texaco, a Texaco lessee dealer who has been dispensing motor fuels other than Texaco motor fuels may request Texaco to reinstall its branded pump or pumps and resume supply of Texaco motor fuel. Texaco agrees to reinstall such pump or pumps upon request on a one-time basis during the term of dealer's lease. Any subsequent requests for resumption of supply during said lease term will be at the sole option of Texaco.

6. For purposes of discharging all of its obligations under paragraph 3, above, if Texaco, in its sole discretion, chooses to allow a Texaco lessee dealer to install additional pumps and tanks at his leased service station for the purpose of the sale of non-Texaco motor fuel, Texaco may reasonably withhold its consent (and still have met all of its obligations under paragraph 3, above) unless the Texaco lessee dealer complies with the following procedures:

(a) Any installation of pumps and tanks to dispense non-Texaco motor fuel shall be at the sole cost and expense of the Texaco lessee dealer and pursuant to plans and specifications previously approved in writing by Texaco. Texaco shall not unreasonably withhold its consent to such plans and specifications, but Texaco may require that the proposed installation be workmanlike and structurally sound, comply with all applicable laws and regulations, and not interfere with the use of Texaco's existing facilities and access to pumps dispensing Texaco branded motor fuel. It is acknowledged, however, that some unavoidable interference with access to pumps dispensing Texaco branded motor fuel might occur during the actual performance of the installation work, which interference the Texaco lessee dealer agrees to keep to a minimum. The Texaco lessee dealer at his sole expense shall obtain and maintain at all times during the installation work (i) workmen's compensation insurance in statutory limits for all eligible workmen engaged in the installation work, (ii) public liability insurance, in which Texaco shall be among the named insureds, for bodily injury and death, and property damage with the coverage limits that each Texaco lessee dealer is then required to carry, (iii) builder's all risk insurance in an amount equal to the value of the completed installation, and (iv) if required by Texaco, a completion bond and/or a payment and performance bond for the installation work with a surety or sureties satisfactory to Texaco, guaranteeing completion of the installation work as described by the installation plans within forty-five days of the commencement of the actual work (acts of God excepted), providing for the removal of all work and the restoration of the property to its pre-existing state within such forty-five day period should the Texaco lessee dealer abandon or be unable to complete the installation work, and providing for the removal of or indemnity against liens or claims arising from the installation work. The Texaco lessee dealer shall submit to Texaco evidence of such coverage and bond, if required, prior to commencing the installation work. Such additional pumps and tanks shall be maintained by the Texaco lessee dealer at the Texaco lessee dealer's sole cost and expense. In the event of any leak into the environment from such additional pumps and/or tanks, or the use of such additional pumps and/or tanks in a manner which is otherwise unsafe or prohibited by application law or regulation, the Texaco lessee dealer shall immediately cease using such additional pumps and tanks and shall immediately, at his sole cost and expense, correct all such problems. Upon such correction, the Texaco lessee dealer may resume using such additional tanks and pumps. In using and maintaining the additional pumps and tanks, the Texaco lessee dealer shall comply with all applicable laws and regulations and shall indemnify and hold Texaco harmless against all claims or any kind for injury or loss resulting from or arising out of the Texaco lessee dealer's handling, storage, dispensing and/or sale of any non-Texaco motor fuel at the service station. The Texaco lessee dealer shall, at his sole cost and expense, include the additional pumps and tanks within the insurance coverage that each Texaco lessee dealer is otherwise required to carry, including, but not limited to, pollution liability and environmental impairment liability insurance.

(b) If Texaco does not own the service station premises in fee but leases the land, the station or both from a third-party, any installation and/or operation by the Texaco lessee dealer of such additional pumps and tanks shall be subject to the Texaco lessee dealer obtaining all necessary consents which may be required by Texaco's lessor, and the Texaco lessee dealer shall at Texaco's discretion and option, unless prohibited by Texaco's lease with Texaco's lessor or a requirement imposed by Texaco's lessor on the Texaco lessee dealer, and at the sole cost and expense of the Texaco lessee dealer, remove such tanks and pumps at the expiration of the Texaco lessee dealer's lease with Texaco. In the event that Texaco's rent to the lessor or from the Texaco lessee dealer is based upon gallonage sold at the service station, the Texaco lessee dealer shall also execute any required verification as to sales of non-Texaco motor fuel.

(c) The Texaco lessee dealer shall take all steps now required by Texaco to protect Texaco's trademarks and shall take all future steps required by Texaco to protect Texaco's trademarks so long as said future steps are not prohibited by law.

7. As used herein, the following definitions shall apply:

(a) "lessee dealer(s)" shall mean each person or entity within the United States who has leased a gasoline service station for the sale at retail of motor fuel under his lessor's trademark and has purchased motor fuels from the lessor for sale at retail under any of the lessor's trademarks at any time from May 11, 1967 to the present.

(b) "Texaco lessee dealer(s)" shall mean a lessee dealer within the United States who has leased a gasoline service station from Texaco for the sale at retail of motor fuel and purchased motor fuel from Texaco for sale at retail under Texaco's trademark(s) at any time from May 11, 1967 to the present. The term shall not include the dealer at any station sold by Texaco or Getty, including specifically but without limitation any dealer in a service station which is sold to comply with requirements imposed by the Federal Trade Commission in connection with the merger between Texaco and Getty.

(c) ''Texaco trademark(s)'' shall mean any source marks, trademarks, trade names, logos, emblems, dispensing pump designs, and/or color combinations associated with Texaco motor fuels, brands or brand names now owned or used, or which in the future may be owned or used, by Texaco in connection with sale of Texaco motor fuel.

(d) ''Texaco motor fuel(s)'' shall mean any gasoline or other motor fuel sold or provided by Texaco to a Texaco lessee dealer as Texaco branded gasoline or motor fuel. As between Texaco and Texaco lessee dealers, Texaco shall be the sole determiner of the specifications, grades, types and sources of ''Texaco motor fuel''.

(e) ''Non-Texaco motor fuel'' shall mean any motor fuel not sold or provided by Texaco to a Texaco lessee dealer as Texaco motor fuel.

(f) ''Texaco'' shall mean Texaco Inc., its predecessors, subsidiaries, divisions and affiliates selling motor fuel to Texaco lessee dealers within the United States and in paragraphs 1a, 2, 3, 4, 5, 6, 10, 11 and 12 hereof shall include Getty Oil Company and its predecessors, subsidiaries, divisions and affiliates selling motor fuel to its branded lessee dealers within the United States.

(g) ''United States'' shall mean the 50 states and the District of Columbia.

(h) A ''representative amount of Texaco branded motor fuels'' means a sufficient amount of each grade and type of motor fuel offered to the dealer by Texaco so that the Texaco lessee dealer shall always have each grade and type available for resale and shall continue to sell Taxaco's branded motor fuels to the public through pumps bearing Texaco's brand identification.

8. The named plaintiffs and all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed valid and timely elections to be excluded from the class (hereinafter collectively referred to in this paragraph as the ''releasing parties'') hereby release and forever discharge Texaco and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as ''the released parties'') from any and all liabilities, claims, indebtedness and causes of action, whether at law or in equity, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claims or Plaintiffs' Pretrial Memorandum and the releasing parties (and each of them) shall be barred from prosecuting any claims against the released parties, or any one of them, which are alleged or could have been alleged by the releasing parties, or any one of them, against the released parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in Plaintiffs' Preliminary Statement of Claim or the Amended Complaints or Plaintiffs' Pretrial Memorandum up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 15 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Texaco and the other released parties expressly released in this paragraph.

9. The name plaintiffs and all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions (hereinafter collectively referred to in this paragraph as the ''releasing parties'') hereby release and forever discharge Texaco and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as ''the released parties'') from any and all liabilities, claims, and causes of action for injunctive or declaratory relief arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claims for injunctive or declaratory relief set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum and the releasing parties (and each of them) shall be barred from prosecuting any claims for injunctive or declaratory relief against the released parties, or any of them, which were alleged or could have been alleged by the releasing parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim for injunctive or declaratory relief set forth in Plaintiffs' Preliminary Statement of Claim or the Amended Complaints or Plaintiffs' Pretrial Memorandum up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 15 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Texaco and the other released parties expressly released in this paragraph.

10. This Settlement Agreement shall not be considered as evidence in this litigation on behalf of any non-settling defendant. Provided, however, that plaintiffs agree that if Texaco complies with the terms of this Settlement Agreement, plaintiffs will not assert against Texaco that the practices, policies and procedures of Texaco with respect to Texaco lessee dealers and with respect to lessee dealers: (a) violate the Sherman or Clayton Acts or, (b) are or will be grounds for any claims thereunder against Texaco.

11. Texaco shall have the right, consistent with applicable statutes and upon written notice given in accordance with applicable statutes or regulations, to terminate the lease and contract of any Texaco lessee dealer who fails to observe and comply with the conditions, including the definitions set forth in this Settlement Agreement. In addition, nothing in this Settlement Agreement shall in any way impair or limit any lawful right that Texaco may have, by contract, statute or otherwise, to terminate, modify or refuse to renew any of its contracts or leases with Texaco lessee dealers.

12. It is the intention of the parties hereto that this Settlement Agreement will not only end the present litigation but also will prevent future litigation by lessee dealers (including Texaco lessee dealers) against Texaco arising out of Texaco's present marketing policies, practices and procedures.

13. Upon execution of this Settlement Agreement, Texaco shall pay to counsel for plaintiffs the total sum of $2,710,000 ("Settlement Sum"). The Settlement Sum shall be held in escrow by counsel for plaintiffs pursuant to order of the Court and shall be placed in an interest-bearing account. The Settlement Sum shall be the only amount Texaco is required to pay pursuant to this Settlement Agreement or pursuant to any judgment(s) subsequently entered in this litigation. Texaco shall not be liable for any costs or attorneys' fees, expenses, escrow agents' fees or expenses, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum. At such time as any portion of the Settlement Sum is distributed to the named plaintiffs or members of the classes, each check making such distribution shall have the following legend on its face: "In consideration of the releases provided in the Settlement Agreement approved by the Court in Bogosian, et al. v. Gulf Oil Corp., et al., Civil Class Action Nos. 71-1137 and 71-2543 (E.D. Pa.)."

14. Plaintiffs may, subject to the approval of the Court, use a maximum of 3% out of the Settlement Sum for purposes of paying the costs of giving notice to the classes of the settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 22 of this Settlement Agreement, any portion of the Settlement Sum actually disbursed to pay such costs of notice shall not be refundable to Texaco.

15. The parties agree that, subject to the provisions of paragraphs 8 and 9 as to non-settling defendants, the above-captioned actions shall be dismissed with prejudice as to Texaco. Final judgment in favor of Texaco as set forth in Exhibit A shall be entered by the District Court in both actions at the time of final approval of this Settlement Agreement.

16. The proposed notice to the classes advising the classes of this Settlement Agreement shall be submitted to counsel for Texaco for review and approval prior to submission of the notice to the District Court. In the event of any dispute between counsel for Texaco and counsel for plaintiffs as to the form or substance of the notice, the District Court will resolve the dispute. Plaintiffs and Texaco shall apply to the Court for an Order requiring all defendants (including Sun) to provide plaintiffs with lists of their current lessee dealers. Texaco and Getty shall supply a list of current Texaco and Getty lessee dealers (or the best information available) at their sole cost and expense.

17. Plaintiffs agree that in consideration for the payment by Texaco of the Settlement Sum set forth in paragraph 13 of this Settlement Agreement, if plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of said final judgment (or judgments) shall be reduced by the greater of:

(a) the amount of the Settlement Sum; or

(b) an amount equal to 10.84% of the dollar amount of said final judgment (or judgments).

It is agreed that this and only this paragraph 17 is provided for the benefit of all defendants (other than Sun and Getty), and any defendant (other than Sun or Getty) may enforce this and only this paragraph 17 against plaintiffs, provided however that Texaco is not so limited to rights under this paragraph.

18. Texaco and plaintiffs agree that Texaco shall not have any responsibility for any allocation of the Settlement Sum among members of the class.

19. (a) Immediately after conclusion of this litigation, plaintiffs' counsel, shall return to Texaco all copies of all documents produced by Texaco to plaintiffs and copies of all deposition transcripts of all present and former Texaco employees and experts (including copies of documents or deposition transcripts of any of the above in possession of experts or any other person or entity) except those containing plaintiffs' counsels' work product or plaintiffs' experts' work product. "Return" shall mean making said documents available to Texaco at the offices of Berger & Montague. Plaintiffs' counsel shall, at the conclusion of this litigation, also immediately destroy any Texaco documents containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents and transcripts containing work product, that contain extracts, quotations or other references from any documents produced by Texaco. The parties agree that Texaco preserves its right in any future litigation to claim attorney-client and/or attorney work product privilege as to any documents protected by such privilege which were voluntarily produced by Texaco in this litigation pursuant to Class Action Order No. 71. In addition, at the conclusion of this litigation, plaintiffs and plaintiffs' counsel shall immediately comply with the present provisions of paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph 15 of Class Action Order No. 27 whether or not such Class Action Orders are subsequently vacated or amended. Notwithstanding the above, those documents heretofore produced by Texaco and identified as TEX 010508, 010514, 010519, 010524-527, 010542, the third sentence in 011245, 012241, 016212-217, 010302-305, 003169, 003711-712, 010301, 010306, 010631, 015167, and the third paragraph of 003316 shall be deemed produced by Texaco subject to Texaco's rights under paragraph IX of Class Action Order No. 45, and Texaco is held not to have waived its rights or privileges with respect to those documents notwithstanding their use or citation by plaintiffs in documents filed with the Court or in depositions. Immediately upon the execution of this Agreement, Texaco shall have no obligation to provide any further discovery or to participate in pretrial proceedings in these actions. Texaco, however, agrees to cooperate with plaintiffs to obtain Court approval of the settlement. The attendance of any Texaco employees at the trial of these actions shall only be pursuant to a subpoena under Rule 45 of the Federal Rules of Civil Procedure.

(b) Immediately after conclusion of this litigation, Texaco shall return to counsel for plaintiffs all copies of all deposition transcripts of the named plaintiffs, plaintiffs' expert witnesses, Messrs. Black, Burton, Byron and Comly and all copies of all documents in Texaco's or Texaco's counsel's possession which were produced in discovery proceedings in this litigation: (a) by either named plaintiff; (b) by plaintiffs' counsel; (c) by any trial witness designated by plaintiffs; or (d) by any person or entity incident to the deposition of Kenneth Black (including copies of documents or deposition transcripts of any of the above in the possession of Texaco's experts or any other person or entity and including all copies of all such documents marked as deposition exhibits) except those containing Texaco's counsel's work product or Texaco's experts' work product. Texaco shall also return to counsel for Sun the documents produced by Sun at the depositions of Messrs. Burton and Comly. "Return" shall mean making said documents available at the offices of Kaye, Scholer, Fierman, Hays & Handler in New York, New York. Texaco's counsel shall, at the conclusion of this litigation, also immediately destroy any and all documents in their possession produced in discovery proceedings in this litigation: (a) by either named plaintiff; (b) by plaintiffs' counsel; (c) by any trial witness designated by plaintiffs; (d) by any person or entity incident to the deposition of Kenneth Black; or (e) by counsel for Sun at the Comly or Burton depositions containing work product and other documents or deposition transcripts (other than public documents or documents filed in this litigation under seal), including documents or deposition transcripts containing work product, that contain extracts, quotations, or other reference from any such documents or from the deposition transcripts of plaintiffs and plaintiffs' expert witnesses. Texaco's counsel shall certify in writing to plaintiffs' counsel that Texaco and Texaco's counsel have complied with this paragraph.

20. This Settlement Agreement is expressly conditioned upon, *inter alia*, the Court entering a Consent Decree and Judgment in the exact form set forth in Exhibit A to this Settlement Agreement.

21. (a) Unless a subsequent change in circumstances occurs which has material adverse effect on plaintiffs' claims against any non-settling defendant, plaintiffs will not settle with any non-settling defendant on terms substantially more favorable to that defendant than to Texaco unless said more favorable terms are also immediately offered to Texaco by plaintiffs. If Texaco accepts said offer, this Settlement Agreement (including, if necessary, Exhibit A) will be amended accordingly. If the parties hereto cannot agree whether the terms offered to a non-settling defendant are "substantially more favorable to that defendant than to Texaco", the dispute will be submitted to the District Court for binding resolution.

(b) It is understood that with respect to a monetary settlement, plaintiffs will not, unless plaintiffs follow the procedures set forth in the second sentence of this paragraph 21(b), accept in settlement less than that settling defendant's percentage share under the Defendants' Sharing Agreement as applied to a total sum of $25 million, and that such a monetary settlement satisfies the intent of this paragraph 21. If plaintiffs do accept a lesser sum than that resulting from the formula described in the preceding sentence, plaintiffs will immediately refund to Texaco a pro rata portion of the Settlement Sum paid by Texaco.

(c) "Non-settling defendant", as used in subparagraphs A and B herein, is limited to the following defendants: American Oil Company, Atlantic Richfield Company, Chevron, U.S.A., Exxon Corporation, Gulf Oil Corporation, Mobil Oil Company, Shell Oil Company, Union Oil Company of California, Phillips Petroleum Company.

22. In the event that the Court denies complete approval of this Agreement or completely approves it but is reversed on appeal, or should the Consent Decree contemplated hereby not be made in the exact form set forth in Exhibit A or be made but be reversed or modified on appeal, then this entire Settlement Agreement shall terminate unless all parties promptly agree to proceed with this Settlement Agreement and/or Consent Decree as proposed to be modified by the Court. In the event this Settlement Agreement is terminated pursuant to this paragraph, the Settlement Sum (unless a maximum of 3%, if previously disbursed incident to giving notice to the classes), plus any accrued interest, shall be immediately returned to Texaco. In the event that the Court grants approval and enters the Consent Decree in the form attached as Exhibit A and in the event that the Consent Decree (Exhibit A) becomes final and nonappealable, then the Settlement Sum (less any disbursements made incident to giving notice to the classes) may be removed from escrow by plaintiffs subject to further Order of the Court.

23. This Settlement Agreement contains a full, complete, and integrated statement of each and every term and provision agreed to by and among the parties hereto. No term or provision in any settlement agreement entered into between plaintiffs and any other defendant with respect to this litigation shall affect this Settlement Agreement or the interpretation thereof. The terms and provisions of this Settlement Agreement are not severable. This Settlement Agreement shall not be orally modified in any respect, and can be modified only by the written agreement of the parties hereto.

24. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania without regard to the conflicts of law rules of the Commonwealth of Pennsylvania.

[SIGNATURES OMITTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN, *et al.*, CIVIL CLASS ACTION

Class Representatives,

v.

GULF OIL CORPORATION, *et al.*, NOS. 71-1137
71-2543

Defendants.

SETTLEMENT AGREEMENT

(AMOCO)

This Settlement Agreement is made this 20th day of September, 1984, by and between Amoco Oil Company, formerly the American Oil Company, and its predecessors, subsidiaries, divisions and affiliates (being hereinafter referred to as "Amoco"), and named plaintiffs Paul J. Bogosian and Louis J. Parisi, both individually and on behalf of: (a) all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed timely and valid elections to be excluded from the class, and (b) all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions. Such members of both classes, including the named plaintiffs, are hereinafter collectively referred to as "plaintiffs."

WHEREAS, the two above-captioned actions have been instituted against Amerada Hess Corporation; Amoco Oil Company; Atlantic Richfield Company; BP Oil Inc.; Chevron Oil Company; Cities Service Company; Exxon Corporation; Getty Oil Company; Gulf Oil Corporation; Mobil Oil Corporation; Phillips Petroleum Company; Shell Oil Company; Sun Oil Company; Texaco Inc.; and Union Oil Company of California ("defendants"), alleging a conspiracy or conspiracies and contracts in violation of Section 1 of the Sherman Act and;

WHEREAS, Amoco has answered the complaints and amended complaints and has raised defenses and affirmative defenses to all allegations; and

WHEREAS, Amoco asserts that its practices, policies and procedures are lawful and reasonable and Amoco denies that it has (or had) entered into any conspiracy (or conspiracies) and denies that it has violated the antitrust laws; and

WHEREAS, Amoco since at least 1949 has recognized the independent businessmen status of its dealers and asserts that it has permitted Amoco lessee dealers to sell Non-Amoco motor fuel; and

WHEREAS, the parties hereto desire amicably to resolve their disputes without the necessity for a lengthy and costly trial;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. As used throughout this Agreement, the following definitions shall apply:

(a) "Lessee dealer(s)" shall mean each person or entity within the United States who has leased a gasoline service station for the sale at retail of motor fuel under his lessor's trademark and has purchased motor fuels from the lessor for the sale at retail under any of the lessor's trademarks at any time from May 11, 1967 to the present.

(b) "Amoco lessee dealer(s)" shall mean a lessee dealer within the United States who has leased a gasoline service station from Amoco for the sale at retail of motor fuel and has purchased motor fuels from Amoco for sale at retail under Amoco's trademark(s) at any time from May 11, 1967 to the present.

(c) "Amoco trademark(s)" shall mean any source marks, trademarks, trade names, slogans, service marks, logos, emblems, dispensing pump designs, color combinations associated with Amoco motor fuels, brands or brandnames now owned or used, or which in the future may be owned or used, by Amoco in connection with sale of Amoco motor fuel.

(d) "Amoco motor fuel(s)" shall mean any gasoline, diesel fuel, gasohol or other motor fuel sold or provided by Amoco to an Amoco lessee dealer for resale under one or more Amoco trademarks. As between Amoco and Amoco lessee dealers, Amoco shall be the sole determiner of the specifications, grades, types and sources of "Amoco motor fuel."

(e) "Non-Amoco motor fuel" shall mean any motor fuel, blend or mixture which is not "Amoco motor fuel" as herein defined.

(f) A "representative amount of Amoco motor fuels" means a sufficient amount of each grade and type of motor fuel offered to the lessee dealer by Amoco so that the Amoco lessee dealer shall always have each grade and type available for resale in such quantities as are necessary to satisfy customer demand for such grades and types and shall continue to sell Amoco's motor fuels to the public through pumps bearing Amoco's trademark.

(g) "United States" shall mean the 50 states and the District of Columbia.

2. The provisions of this Settlement Agreement binding upon Amoco shall remain in effect for five (5) years from the date hereof and shall apply only to the operations of Amoco, if any, in the United States. Following said five (5) year period, Amoco shall have no further

obligations pursuant to this Settlement Agreement or pursuant to the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement.

3. Amoco agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of motor fuel which Amoco lessee dealers may offer for sale or with respect to Amoco's contractual and lease provisions with Amoco's lessee dealers. The foregoing agreement does not constitute an admission or evidence of any past or present violation of law by Amoco and shall not be construed as an admission or evidence of any past or present violation of law by Amoco.

4. Amoco further agrees that the express terms of its leases and motor fuel sales contracts with Amoco lessee dealers, whether taken individually or together, do not and shall not require any Amoco lessee dealer to purchase his entire requirement of motor fuel from Amoco. Nothing in this Settlement Agreement is intended to deny Amoco the following continued rights:

(a) to protect Amoco's trademarks by, *inter alia*, requiring that any Non-Amoco motor fuel sold by Amoco lessee dealers not be sold under Amoco trademarks or as Amoco motor fuel and to require the Amoco lessee dealers to adhere strictly to the guidelines issued by Amoco to Amoco lessee dealers from time to time relating to the protection of Amoco trademarks, and

(b) to be indemnified and held harmless by the Amoco lessee dealer against all claims of any kind for violations, injury or loss resulting from or arising out of the Amoco lessee dealer's handling, storage, dispensing and/or sale of any Non-Amoco motor fuel at the leased premises.

5. For purposes of discharging all of its obligations under paragraph 4, above, Amoco may, at its discretion and option, on a station by station basis or otherwise, determine whether Amoco lessee dealers are to use either (a) or (b) below as follows:

(a) The right to dispense Non-Amoco motor fuels at the leased premises in accordance with the conditions and procedures prescribed in paragraphs 6 and 7 below; or

(b) The right to dispense Non-Amoco motor fuels only through additional pumps and tanks, in accordance with the conditions and procedures prescribed in paragraphs 6 and 8 below.

6. The following conditions shall apply at any Amoco station which dispenses non-Amoco motor fuels whether under option 5(a) or 5(b).

(a) The Amoco lessee dealer must maintain and continue to dispense a representative amount of Amoco motor fuels for resale to the public.

(b) Motor fuels dispensed from pumps bearing Amoco's trademarks shall be Amoco motor fuels.

(c) The Amoco lessee dealer may not remove, alter or cover Amoco's brand identification on the premises except as provided by section 7(b) of this Agreement.

(d) Amoco shall have the right to reasonably restrict the size and location of any signs displayed at the leased premises which advertise the sale of Non-Amoco motor fuels and to require that the lessee dealer adequately display signs to indicate clearly that such motor fuels are Non-Amoco motor fuels. Amoco shall have the right to require that any pump or container utilized in the marketing of Non-Amoco motor fuels display thereon a sign or label notifying the public that motor fuels supplied therefrom are not products supplied by Amoco, in order to avoid clearly any confusion or misunderstanding by the public as to the source, certification, sponsorship, or approval of such motor fuels. Such sign or label must be clearly visible to the public, must be at least eight inches by ten inches in size, and must carry the following statement in type at least three inches in height:

THE PRODUCT SOLD FROM THIS PUMP IS NOT
SUPPLIED BY AMOCO OIL COMPANY

A "Non-Amoco" pump is one that dispenses any Non-Amoco motor fuel.

(e) Amoco will not accept any liability from the lessee dealer, the public or any government entity arising from the sale of Non-Amoco motor fuels sold by the lessee dealer. The Amoco lessee dealer is responsible for any necessary octane posting changes on his pumps. The Amoco lessee dealer is also responsible for ensuring that any Non-Amoco motor fuel sold to the public conforms to EPA lead content requirements and for complying with all applicable statutes and regulations regarding the storage, handling, sale, certification, grade, octane and price posting which may apply to his handling of Non-Amoco motor fuel. Any Amoco lessee dealer to whom this policy applies will be required to sign an indemnity letter acknowledging this responsibility.

(f) The lessee dealer may not honor the Amoco credit card or other Amoco authorized credit cards nor may he utilize any Amoco point of sale, debit card or other Amoco credit systems for sales of Non-Amoco motor fuels. The Amoco authorized credit card may only be honored for purchases of Amoco motor fuels. In transactions involving the sales of Non-Amoco motor fuels, the lessee dealer shall use a credit card invoice which does not display any Amoco trademark, trade name, brand or other Amoco identification. Likewise the Amoco lessee dealer in soliciting business or billing for Non-Amoco motor fuels shall not use any other invoice, stationery, or other documents which could have the effect of creating a likelihood of confusion for the customer or public as to the source, sponsorship or approval of the product sold.

(g) Amoco reserves the right to have its representatives, upon reasonable notice and at times acceptable to the Amoco lessee dealer, audit the Amoco lessee dealer's books and records relating to the purchase and distribution of motor fuels to inspect the Amoco lessee dealer's locations and to test motor fuels in the possession or control of the Amoco lessee dealer for the purpose of determining compliance with the provisions of this Settlement Agreement concerning sales of Non-Amoco motor fuels.

(h) In the event that the station premises are leased by Amoco from a third person, and Amoco's rent or other obligation to the lessor is based upon gallonage sold at the service station, the Amoco lessee dealer shall report and execute any required verification as to sales of Non-Amoco motor fuel, and pay to Amoco the amount of any additional rent that Amoco is obligated to pay its lessor on account of the sale of Non-Amoco motor fuel.

(i) The Meter Marketing Plan ("MMP") may not be continued at any lessee dealer location dispensing Non-Amoco motor fuel. The Amoco lessee dealer may be required to terminate his MMP agreement and to sign an appropriate rider for payment of the purchase price in cash upon delivery of Amoco motor fuel. An inventory will be taken prior to MMP termination to determine the amount of Amoco motor fuel which remains in underground storage. The lessee dealer may elect either to dispense all remaining motor fuel under his MMP agreement until his storage tanks are empty prior to introducing Non-Amoco motor fuel, or the lessee dealer may elect to pay Amoco for either the cost of the remaining motor fuel or the cost of pumping such remaining motor fuel out of storage. The lessee dealer's MMP deposit will be refunded or credited to the lessee dealer's account upon MMP agreement termination. Reinstatement of the location to lessee dealer MMP delivery will be at the discretion of the company but will not be unreasonably withheld.

(j) Amoco shall have the right at its option to modify or interconnect the existing tank and pump systems so as to maintain the existing aggregate storage and delivery capacities for Amoco motor fuels. Likewise, Amoco, at its option, may choose to make no modifications but may require that such existing tanks and pumps be used for additional storage and delivery for any of the remaining grades of Amoco motor fuel then offered as part of lessee dealer's obligation to carry representative amounts of Amoco motor fuel.

(k) Amoco shall have the right to charge the lessee dealer additional rent based on the sale of Non-Amoco motor fuels determined in good faith and in the ordinary course of business on the same basis as Amoco motor fuel constitutes a factor in determining rent at the station.

7. For the purposes of discharging all of its obligations under paragraph 4 above, if Amoco, in its sole discretion, chooses to allow the Amoco lessee dealer to dispense Non-Amoco motor fuels at the leased premises by utilizing existing tanks, Amoco may withhold its consent (and still have met all of its obligations under paragraph 4, above) unless the Amoco lessee dealer complies with the following procedures:

(a) The Amoco lessee dealer must supply, install and maintain the dispensing pumps, hoses, and nozzles used for dispensing Non-Amoco motor fuels.

(b) The Amoco lessee dealer must give Amoco reasonable advance notice in writing to enable Amoco to remove its branded pumps at Amoco's expense.

(c) In storing and dispensing Non-Amoco motor fuels, the Amoco lessee dealer may employ existing underground tanks, submersible pumps and lines, provided that the Non-Amoco motor fuels must at all times be segregated from Amoco motor fuels. Amoco shall maintain the underground tanks, submersible pumps and lines used for such purpose at lessee dealer's expense.

(d) The lessee dealer shall not use any storage tank, pump, or container which has contained Non-Amoco motor fuel for the storage or dispensing of Amoco motor fuel until such pump or container has been completely purged of all Non-Amoco motor fuels (at the lessee dealer's expense) to the satisfaction of an Amoco representative. In this respect, the lessee dealer must provide notice to Amoco when he wishes to introduce any Amoco motor fuels into a storage tank, pump, or container that has supplied or been used for storage or dispensing of Non-Amoco motor fuels.

(e) Upon reasonable advance written notice to Amoco, a lessee dealer who has been dispensing Non-Amoco motor fuels may request Amoco to reinstall its branded pump or pumps and resume supply of Amoco motor fuel. Amoco agrees to reinstall such pump or pumps upon request on a one-time basis during the term of the Amoco lessee dealer's lease. Any subsequent requests for resumption of supply during said lease term will be at the sole option of Amoco.

8. For purposes of discharging all of its obligations under paragraph 6, above, if Amoco, in its sole discretion, chooses to allow an Amoco lessee dealer to install additional pumps and tanks at his leased service station for the purpose of the sale of Non-Amoco motor fuel, Amoco may reasonably withhold its consent (and still have met all of its obligations under paragraph 6, above) unless the Amoco lessee dealer complies with the following procedures:

(a) Any installation of additional equipment to dispense Non-Amoco motor fuel shall be at the sole cost and expense of the Amoco lessee dealer and pursuant to engineering plans and specifications previously submitted to and approved in writing by Amoco (hereafter collectively referred to as "Installation Plans"). Amoco shall not unreasonably withhold its approval of the Installation Plans, but Amoco may require that the proposed installation be workmanlike and structurally sound, conform to the standards contemporaneously employed by Amoco (which standards Amoco shall make available to the Amoco lessee dealer upon request), be performed by a qualified contractor, comply with all applicable laws and regulations and not interfere with access to, use of, maintenance or repair of Amoco's existing facilities and equipment dispensing Amoco motor fuel to the public. It is acknowledged, however, that during the actual performance of the installation work there may be some unavoidable interference with access to Amoco's existing facilities, which interference the Amoco lessee dealer agrees to keep to a minimum. To the extent that Amoco's signature shall be required for any permit required by law, the Amoco lessee dealer shall indemnify Amoco, to its satisfaction, against any claim, cost, liability or expense resulting from any error, omission or other impropriety or deficiency in the application for such permit.

(b) If the station premises are leased from, or subject to a mortgage or other security interest held by a third person, and the consent of such lessor, mortgagee or other third person is required for the proposed installation of the additional equipment, such consent(s) shall have been previously given in writing and Amoco shall not be required to go to any expense or to give up any consideration for such consent(s). Such consent(s) may provide that at the final termination of the underlying lease from the lessor to Amoco, the Amoco lessee dealer shall remove the additional equipment and restore the premises to its previous condition, but in the event that the consent does not so provide, it shall provide that Amoco shall have the right to remove the additional equipment and restore the premises to its previous condition at Amoco's sole election and expense without further consent by or agreement of the Amoco lessee dealer.

(c) The Amoco lessee dealer at his sole expense shall obtain and maintain at all times during the installation work (i) workmen's compensation insurance in statutory limits for all eligible workmen engaged in the installation work, (ii) public liability insurance, in which Amoco shall be among the named insureds, for bodily injury and death, and property damage with the coverage limits that each Amoco lessee dealer is then required to carry, (iii) builder's all risk insurance in an amount equal to the value of the completed installation, and (iv) if required by Amoco, a completion bond and/or a payment and performance bond for the installation work with a surety or sureties satisfactory to Amoco, guaranteeing completion of the installation work as described by the Installation Plans within forty-five days of the commencement of the actual work (acts of God excepted), providing for the removal of all work and the restoration of the property to its pre-existing state within such forty-five day period should the Amoco lessee dealer abandon or be unable to complete the installation work, and providing for the removal of or indemnity against liens or claims arising from the installation work. The Amoco lessee dealer shall submit to Amoco evidence of such coverage and bond, if required, prior to commencing the installation work.

(d) Amoco may, through an authorized member of its Marketing Group, inspect the installation work in progress at all reasonable times. If Amoco shall find any material variance from the Installation Plans, the Amoco lessee dealer shall take appropriate corrective action promptly after receipt of notice from Amoco describing such variance. Amoco may make a final inspection of the installation work upon completion or substantial completion, including inspection of the additional equipment. The Amoco lessee dealer shall promptly perform any additional work necessary to correct any material variation from the Installation Plans.

(e) Upon completion and final inspection of the installation work, the Amoco lessee dealer shall submit to Amoco a copy of a certificate of completion, a certificate of occupancy or other similar document, from the appropriate authority.

(f) Unless otherwise agreed by the Amoco lessee dealer and Amoco, the Amoco lessee dealer, upon his departure from the station premises, whether by abandonment, expiration, cancellation, nonrenewal or termination of his lease with Amoco, shall have the option to remove the additional equipment in its entirety and restore the premises to the condition existing prior to the installation work within thirty days at the Amoco lessee dealer's sole cost and expense; or should the Amoco lessee dealer not so remove the additional equipment within thirty days, title to and ownership of the additional equipment shall automatically transfer to Amoco at no cost or expense to Amoco.

(g) It is a fundamental premise of and condition to this Settlement Agreement, and any consent decree issued pursuant thereto, that the additional equipment installed by the Amoco lessee dealer pursuant to paragraph 5(b) thereof shall be the sole property of the Amoco lessee dealer and that Amoco shall have no interest in and shall not be answerable for any claims or liability accruing from such installation or any operation thereof, including without any limitation thereto, liability for claims for pollution or environmental injury, damage or degradation of any kind resulting from seepage, leaks or spillage occurring or claimed to occur from the installation or operation of the additional equipment. Further, the installation of additional equipment shall not be deemed to create the relationship of employee and employer, or of partners or joint ventures between Amoco and any Amoco lessee dealer making such installation.

(h) The Amoco lessee dealer shall, at his sole expense, keep the additional equipment and the station premises as affected by the additional equipment in good repair and working order and condition, and neat and orderly in a manner consistent with the operation of a first class service station. Without limitation, the Amoco lessee dealer shall pay, or reimburse Amoco for, all utility charges, municipal fees, any increases in real or personal property taxes, any increases in gallonage rentals that Amoco is required to pay its lessor, and other expenses specifically attributable to the additional equipment and its operation. To the extent that Amoco is aware of any such expenses, Amoco shall make them known to the Amoco lessee dealer at the time that the Amoco lessee dealer first notifies Amoco of his intention to install the additional equipment.

(i) In maintaining and operating the additional equipment, the Amoco lessee dealer shall comply with all applicable laws and regulations and shall indemnify and hold Amoco harmless against all claims of any kind for injury or loss resulting from or arising out of the Amoco lessee dealer's handling, storage, dispensing and/or sale of any Non-Amoco motor fuel at the service station. The Amoco lessee dealer shall, at his sole cost and expense, include the additional equipment within insurance coverage including, but not limited to, general liability, and fair and extended coverage, pollution liability and environmental impairment liability insurance, for amounts to be reasonably specified by Amoco. The Amoco lessee dealer shall cause Amoco to be listed as an additional named insured under such coverage. In the event that the Amoco lessee dealer's insurance policy does not cover claims of damage, including damage to the environment, resulting from damage to, defects in, or obsolescence of the additional equipment, or resulting from leaks, seepage or spillage occurring on account of or from the operation of the additional equipment, then the Amoco lessee dealer also shall, at his sole cost and expense, obtain and maintain throughout the period that the additional equipment is in place, whether it is being used or not, a policy of insurance, a bond, or an agreement to indemnify and to hold Amoco harmless issued by a financially responsible party satisfactory to Amoco in an amount sufficient to cover any such claims which may be asserted.

(j) The Amoco lessee dealer shall be solely responsible for conducting surveillance procedures sufficient to protect against and detect any and all seepage, leaks or spillage occurring as a result of the operation of the additional equipment. Without limitation to the foregoing obligation, the Amoco lessee dealer shall undertake the same leak and water contamination prevention and detection measures with respect to the additional equipment which he is now or in the future is required to undertake, or which Amoco now or in the future undertakes (which measures Amoco shall make known to the Amoco lessee dealer), with respect to Amoco equipment located at or on Amoco leased service station premises. The Amoco lessee dealer shall immediately report to Amoco any detectable loss of any motor fuel, water in excess of one inch in any product storage tank, any indication of any failure or defect in the additional equipment or any component thereof, any change in the condition of the land or surface adjacent to the pumps and dispensers, any other event which would require notification to Amoco if it related to equipment furnished by Amoco, or any other evidence or indication of any leak, suspected leak or the occurrence of any of the foregoing indications of a leak or contamination, the Amoco lessee dealer shall immediately cease using the additional equipment in its entirety, shall immediately remove any motor fuel remaining in the tank or tanks which are suspected of leaking, shall immediately notify Amoco, and shall promptly, at his sole cost and expense, investigate, repair and correct the source and consequences of such leak or contamination. Upon completion of all necessary corrective work, including any and all work that may be required by any governmental authority, the Amoco lessee dealer may upon written notice to Amoco resume use of the additional equipment.

(k) Amoco shall have the same rights respecting the inspection of the additional equipment that it now has or may in the future have with respect to Amoco equipment located at or on Amoco leased service station premises.

(l) To the extent the Amoco lessee dealer is permitted by law or contract to devise, bequeath, sublet, assign or otherwise transfer his entire leasehold interest, he may also so transfer, at his option, his ownership interest in the additional equipment, provided that any person to whom such additional equipment is transferred shall accept and agree with all of the procedures prescribed herein. If the Amoco lessee dealer does transfer his leasehold interest, but chooses not to transfer title to and ownership of the additional equipment, he shall transfer title to and ownership of the additional equipment to Amoco at no cost or expense to Amoco. In no event may the Amoco lessee dealer in any other manner transfer his ownership interest in the additional equipment separate and apart from a transfer of his entire leasehold interest.

(m) The Amoco lessee dealer shall take all steps now required by Amoco to protect Amoco's trademarks and shall take all future steps required by Amoco to protect Amoco's trademarks so long as such steps are not prohibited by law.

9. The named plaintiffs and all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed valid and timely elections to be excluded from the class (hereinafter collectively referred to in this paragraph as the “releasing parties”) hereby release and forever discharge Amoco Oil Company and its parent corporation, predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as “the released parties”) from any and all liabilities, claims, indebtedness and causes of action, whether at law or in equity, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, and the releasing parties (and each of them) shall be barred from prosecuting any claims against the released parties, or any one of them, which were alleged or could have been alleged by the releasing parties, or any one of them, against the released parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in Plaintiffs' Preliminary Statement of Claim or the Amended Complaints or Plaintiffs' Pretrial Memorandum, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 17 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Amoco Oil Company and the other released parties expressly released in this paragraph.

10. The named plaintiffs and all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions (hereinafter collectively referred to in this paragraph as the “releasing parties”) hereby release and forever discharge Amoco Oil Company and its parent corporation, predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as “the released parties”) from any and all liabilities, claims, and causes of action for injunctive or declaratory relief arising under the antitrust or trademark laws of the United States or of any state, including without limitation, any claims for injunctive or declaratory relief set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, and the releasing parties, (and each of them) shall be barred from prosecuting any claims for injunctive or declaratory relief against the released parties, or any of them, which were alleged or could have been alleged by the releasing parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim for injunctive or declaratory relief set forth in Plaintiffs' Preliminary Statement of Claim or the Amended Complaints or Plaintiffs' Pretrial Memorandum, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 17 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Amoco Oil Company and the other released parties expressly released in this paragraph.

11. This Settlement Agreement shall not be considered as evidence in this litigation on behalf of any non-settling defendant. Provided, however, that plaintiffs agree that if Amoco complies with the terms of this Settlement Agreement, plaintiffs will not assert against Amoco that the practices, policies and procedures of Amoco with respect to Amoco lessee dealers or with respect to other lessee dealers: (a) violate the Sherman or Clayton Acts or trademarks laws of the United States or of any State or, (b) are or will be grounds for any claims thereunder against Amoco.

12. Nothing in this Settlement Agreement shall in any way impair or limit any lawful right that Amoco may have, by contract, statute or otherwise, to terminate, modify or refuse to renew any of its contracts or leases with Amoco lessee dealers. Nothing in this Settlement Agreement shall in any way impair or limit any right that Amoco has, by contract, statute or otherwise lawfully to rent, loan or lease, to an Amoco lessee dealer, pumps and tanks to dispense motor fuels, conditioned expressly or implicitly upon the Amoco lessee dealer's agreement to use such equipment only for handling Amoco motor fuels.

13. Amoco shall have the right, consistent with applicable statutes and upon written notice given in accordance with applicable statute or regulation, to terminate the contract or lease of any lessee dealer who fails to observe and comply with the foregoing conditions, including the definitions set forth in paragraph 1 of this Settlement Agreement and Paragraph 5 of the Order and Consent Decree. To this end, these conditions and definitions shall be applicable as of the date of Final Judgment in this proceeding to all present contracts and leases with Amoco's lessee dealers and may be incorporated by Amoco in any future contracts or leases between Amoco and its lessee dealers. The foregoing right shall not exclude, impair, or limit any other right Amoco may have to terminate or fail to renew any of its contracts or leases consistent with applicable law.

14. It is the intention of the parties hereto that this Settlement Agreement will not only end the present litigation but also will prevent future litigation by lessee dealers (including Amoco lessee dealers) against Amoco arising out of Amoco's present marketing policies, practices and procedures.

15. Upon execution of this Settlement Agreement, Amoco shall pay to counsel for plaintiffs the total sum of $2,680,000 (the ''Settlement Sum''). The Settlement Sum shall be the only amount Amoco is required to pay pursuant to this Settlement Agreement or pursuant to any judgment(s) subsequently entered in this litigation. Amoco shall not be liable for any costs or attorneys' fees, expenses, escrow agents' fees or expenses, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum.

16. Plaintiffs may, subject to the approval of the Court, use a maximum of three (3) percent out of the Settlement Sum for purposes of paying the costs of giving notice to the classes of the settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 25 of this Settlement Agreement, any portion of the Settlement Sum actually disbursed to pay such costs of notice (up to a maximum of three (3) percent of the Settlement Sum) shall not be refundable to Amoco.

17. The parties agree that, subject to the provisions of paragraphs 9 and 10 as to non-settling defendants, the above captioned actions shall be dismissed with prejudice as to Amoco Oil Company. Final judgment in favor of Amoco Oil Company as set forth in Exhibit A shall be entered by the District Court in both actions at the time of final approval of this Settlement Agreement.

18. The proposed notice to the classes advising the classes of this Settlement Agreement shall be submitted to counsel for Amoco for review and approval prior to submission of the notice to the District Court. In the event of any dispute between counsel for Amoco and counsel for plaintiffs as to the form or substance of the notice, the District Court will resolve the dispute. Plaintiffs and Amoco shall apply to the Court for an Order requiring all defendants (including Sun and Getty) to provide plaintiffs with lists of their current lessee dealers. Amoco shall not pay the costs of obtaining or preparing any such lists of current lessee dealers, except that Amoco shall supply a list of current Amoco lessee dealers (or the best information available) at its sole cost and expense.

19. Plaintiffs agree that in consideration for the payment by Amoco of the Settlement Sum set forth in paragraph 15 of this Settlement Agreement, if plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of said final judgment (or judgments) shall be reduced by the greater of:

(a) the amount of the Settlement Sum; or

(b) an amount equal to 10.72% of the dollar amount of said final judgment (or judgments).

It is agreed that this and only this paragraph 19 is provided for the benefit of all defendants (other than Sun and Getty), and any defendant (other than Sun or Getty) may enforce this and only this paragraph 19 against plaintiffs, provided however that Amoco's rights under this paragraph are in addition to its rights under the other provisions of this Settlement Agreement.

20. Amoco and plaintiffs agree that Amoco shall not have any responsibility for any allocation of the Settlement Sum among members of the class.

21. Immediately after conclusion of this litigation, plaintiffs' counsel shall return to Amoco all copies of all documents produced by Amoco to plaintiffs or to plaintiffs' counsel or to any of plaintiffs' experts (including all copies of documents in the possession of plaintiffs' experts or any other person or entity and including all copies of all Amoco documents marked as deposition exhibits) except those containing plaintiffs' counsels' work product or plaintiffs' experts' work product. ''Return'' shall mean making said documents available to Amoco at the offices of Berger & Montague. Plaintiffs' counsel and plaintiffs' experts shall, at the conclusion of this litigation, also immediately destroy any and all Amoco documents containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product that contain extracts, quotations or other references from any documents produced by Amoco. In addition, at the conclusion of this litigation, plaintiffs and plaintiffs' counsel shall immediately comply with the present provisions of paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph 15 of Class Action Order No. 67 whether or not such Class Action Orders are subsequently vacated or amended. Plaintiffs' counsel shall certify in writing to counsel for Amoco that the named plaintiffs and plaintiffs' experts and plaintiffs' counsel have complied with this paragraph. Immediately upon the execution of this Agreement, Amoco shall have no obligation to provide any further discovery or to participate in pretrial proceedings in these actions. However, Amoco agrees to cooperate with plaintiffs to obtain Court approval of this settlement. The attendance of any Amoco employee at the trial of these actions shall only be pursuant to a subpoena under Rule 45 of the Federal Rules of Civil Procedure.

22. Immediately after conclusion of this litigation, Amoco shall return to counsel for plaintiffs all copies of all documents in Amoco's or Amoco's counsel's possession which were produced in discovery proceedings in this litigation: (a) by either named plaintiff; (b) by plaintiffs' counsel; (c) by any trial witness designated by plaintiffs; or (d) by any person or entity incident to the deposition of Kenneth Black (including copies of documents in the possession of Amoco's experts or any other person or entity and including all copies of all such documents marked as deposition exhibits) except those containing Amoco's counsel's work product or Amoco's experts' work product. Amoco shall also return to counsel for Sun the documents produced by Sun at the deposition of Messrs. Burton and Comly. ''Return'' shall mean making said documents available at the offices of Morgan, Lewis & Bockius in Philadelphia, Pennsylvania. Amoco's counsel shall,

at the conclusion of this litigation, also immediately destroy any and all documents in their possession produced in discovery proceedings in this litigation: (a) by either named plaintiff; (b) by plaintiffs' counsel; (c) by any trial witness designated by plaintiffs; (d) by any person or entity incident to the deposition of Kenneth Black; or (e) by counsel for Sun at the Comly or Burton depositions containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any such documents. Amoco's counsel shall certify in writing to plaintiffs' counsel that Amoco and Amoco's counsel have complied with this paragraph.

23. This Settlement Agreement is expressly conditioned upon, *inter alia*, the Court entering a Consent Decree and Judgment in the exact form set forth in Exhibit A to this Settlement Agreement.

24. Unless a subsequent change in circumstances occurs which has a material adverse effect on plaintiffs' claims against any non-settling defendant, plaintiffs will not settle with any non-settling defendant on terms substantially more favorable to that defendant than to Amoco unless said more favorable terms are also immediately offered to Amoco by plaintiffs. If Amoco accepts said offer, this Settlement Agreement (including, if necessary, Exhibit A) will be amended accordingly. If the parties hereto cannot agree whether the terms offered to a non-settling defendant are ''substantially more favorable to that defendant than to Amoco'', the dispute will be submitted to the District Court for binding resolution.

(a) ''Non-settling defendant,'' as used herein, is limited to the following defendants:

Atlantic Richfield Company
Chevron, U.S.A.
Exxon Corporation
Gulf Oil Corporation
Mobil Oil Company
Shell Oil Company
Texaco, Inc.
Union Oil Company of California
Phillips Petroleum Company
BP Oil Inc.

(b) It is understood that with respect to a monetary settlement, plaintiffs will not, unless plaintiffs follow the procedures set forth in the second sentence of this paragraph 24(b), accept in settlement less than that settling defendant's percentage share under the Defendants' Sharing Agreement as applied to a total sum of $25 million, and that such a monetary settlement satisfies the intent of this paragraph 24. If plaintiffs do accept a lesser sum than that resulting from the formula described in the preceding sentence, plaintiffs will immediately refund to Amoco a pro rata portion of the Settlement Sum paid by Amoco.

25. In the event that the Court denies complete approval of this Settlement Agreement or completely approves it but is reversed on appeal, or should the Consent Decree contemplated hereby not be made in the exact form set forth in Exhibit A or be made but be reversed or modified on appeal, then this entire Settlement Agreement shall terminate unless all parties promptly agree to proceed with this Settlement Agreement and/or Consent Decree as proposed to be modified by the District Court or the Appellate Court. In the event this Settlement Agreement is terminated pursuant to this paragraph, the Settlement Sum (less a maximum of three (3) percent of the Settlement Sum, if previously disbursed incident to giving notice to the classes), plus any accrued interest, shall be immediately returned to Amoco. In the event that the Court grants approval and enters the Consent Decree in the form attached as Exhibit A and in the event that the Consent Decree (Exhibit A) becomes final and non-appealable, then the Settlement Sum (less any disbursements made incident to giving notice to the classes) may be removed from escrow by counsel for plaintiffs subject to further Order of the Court.

26. This Settlement Agreement contains a full, complete, and integrated statement of each and every term and provision agreed to by and among the parties hereto. No term or provision in any settlement agreement entered into between plaintiffs and any other defendant with respect to this litigation shall affect this Settlement Agreement (except as provided in paragraph 24 above) or the interpretation thereof. The terms and provisions of this Settlement Agreement are not severable. This Settlement Agreement shall not be orally modified in any respect, and can be modified only by the written agreement of the parties hereto.

27. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of law rules of the Commonwealth of Pennsylvania.

[SIGNATURES OMITTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN, *et al.*, : CIVIL CLASS ACTIONS
:
Class Representatives, :
:
v. :
:
GULF OIL CORPORATION, *et al.*, : NO. 71-1137,
: 71-2543.
Defendants. :

SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND UNION OIL COMPANY OF CALIFORNIA.

This Settlement Agreement is made the 21st day of September, 1984 by and between Union Oil Company of California (Union Oil Company of California and its parent, predecessors, subsidiaries, divisions and affiliates being referred to in this Settlement Agreement as ''Union'') and named plaintiffs Paul J. Bogosian and Louis J. Parisi, both individually and on behalf of (a) all members of the Rule 23(b)(3) class in these consolidated actions as defined in Class Action Order No. 1 who have not made timely and valid elections to be excluded from the class, and (b) all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in these actions. Those members of both classes, including the named plaintiffs, are collectively referred to in this Settlement Agreement as ''plaintiffs.''

WHEREAS, these actions have been instituted against Amerada Hess Corporation, Amoco Oil Company, Atlantic Richfield Company, BP Oil Inc., Chevron Oil Company, Cities Services Company, Exxon Corporation, Getty Oil Company, Gulf Oil Corporation, Mobil Oil Corporation, Phillips Petroleum Company, Shell Oil Company, Sun Oil Company, Texaco Inc. and Union Oil Company of California (''defendants''), alleging a conspiracy or conspiracies in violation of Section 1 of the Sherman Act;

WHEREAS, Union has answered the complaints and amended complaints and has raised defenses and affirmative defenses to all allegations;

WHEREAS, it is Union's position that its practices, policies and procedures are lawful and reasonable, and Union denies that it has entered into any conspiracy and denies that it has violated the antitrust laws; and

WHEREAS, the parties to this agreement desire amicably to resolve their disputes without the necessity for a lengthy and costly trial.

NOW, THEREFORE, the parties to this agreement, intending to be legally bound, agree as follows:

1. The provisions of this Settlement Agreement applicable to and binding on Union shall remain in effect for five years from the date of the agreement and shall apply to the operations of Union only in the fifty states of the United States and in the District of Columbia. Following that five-year period, Union shall have no further obligations pursuant to this Settlement Agreement or pursuant to the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement.

2. Union agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of motor fuel that Union lessee dealers may offer for sale or with respect to Union's contractual and lease provisions with Union lessee dealers.

3. Union further agrees that the express terms of its leases and motor fuel sales contracts with Union lessee dealers, whether taken individually or together, do not and shall not require any Union lessee dealer to purchase his entire requirements of motor fuels from Union. Nothing in this Settlement Agreement is intended to deny Union the continued rights:

(a) to protect Union's trademarks by, *inter alia*, requiring that any motor fuel sold by Union lessee dealers that is non-Union motor fuel not be sold under Union trademarks or as Union motor fuel and to require the Union lessee dealers to adhere strictly to the guidelines issued by Union to Union lessee dealers from time to time relating to the protection of Union's trademarks;

(b) to require Union lessee dealers to take deliveries of Union motor fuels in minimum delivery quantities as specified by Union from time to time for lessee dealers generally in the same marketing area;

(c) to require Union lessee dealers to buy and resell a representative quantity of Union motor fuels, as defined in paragraph 6(f), below;

(d) to prohibit Union lessee dealers from accepting any Union-authorized credit card for the purchase of non-Union motor fuel; and

(e) to be indemnified and held harmless by a Union lessee dealer against all claims of any kind for injury or loss resulting from or arising out of the Union lessee dealer's handling, storage, dispensing or sale of any non-Union motor fuel at the leased premises.

4. For purposes of discharging all of its obligations under paragraph 3, above, Union may, at its discretion and option, on a station-by-station basis or otherwise, and with respect to any one or more Union lessee dealers, either—

(a) allow a Union lessee dealer to debrand his pumps in the manner set forth in the policy issued by Union in December 1980 or in the manner set forth in any other policy issued by Union that is substantially similar. Nothing in this Settlement Agreement shall affect

Union's right at its discretion and option, to modify and interconnect the existing tank and pump system at any station leased by a Union lessee dealer so as to maintain the aggregate storage and delivery capacities for Union motor fuels; or

(b) provide a Union lessee dealer the opportunity to add additional pumps and tanks, in accordance with the procedures and limitations prescribed in paragraph 5, below.

Under both alternative (a) and alternative (b), Union shall have the right to restrict the size and the location of any sign displayed at the leased premises that advertises the sale of non-Union motor fuel and to require that the Union lessee dealer adequately display signs to indicate clearly that such motor fuel is other than Union motor fuel. Union shall not have any responsibility to comply with statutes and regulations governing the sale, certification, grade or price posting of any non-Union motor fuel dispensed by a Union lessee dealer.

5. For purposes of discharging all of its obligations under paragraph 3, above, if Union, in its sole discretion, chooses to allow a Union lessee dealer to install additional pumps and tanks at his leased service station for the purpose of selling non-Union motor fuel, Union may reasonably withhold its consent (and still have met all of its obligations under paragraph 3, above) unless the Union lessee dealer complies with the following procedures:

(a) Any installation of pumps and tanks to dispense non-Union motor fuel shall be at the sole cost and expense of the Union lessee dealer and pursuant to plans and specifications previously approved in writing by Union. Union shall not unreasonably withhold its consent to such plans and specifications, but Union may require that the proposed pumps and tanks be structurally sound, comply with all applicable laws and regulations and not interfere with the use of Union's existing facilities and access to pumps dispensing Union motor fuel. The actual performance of the installation work shall be workmanlike. It is acknowledged, however, that some unavoidable interference with access to pumps dispensing Union motor fuel might occur during the actual performance of the installation work, which interference the Union lessee dealer agrees to keep to a minimum. The Union lessee dealer at his sole expense shall obtain and maintain at all times during the installation work (i) workmen's compensation insurance in statutory limits for all eligible workmen engaged in the installation work, (ii) public liability insurance, in which Union shall be among the named insureds, for bodily injury and death, and property damage with the coverage limits that each Union lessee dealer is then required to carry, (iii) builder's all risk insurance in an amount equal to the value of the completed installation, and (iv) if required by Union, a completion bond or a payment and performance bond, or both, for the installation work, with a surety or sureties satisfactory to Union, guaranteeing completion of the installation work as described by the installation plans within forty-five days of the commencement of the actual work (acts of God excepted), providing for the removal of all work and the restoration of the property to its preexisting state within that forty-five day period if the Union lessee dealer abandons or is unable to complete the installation work, and providing for the removal of or indemnity against liens or claims arising from the installation work. The Union lessee dealer shall submit to Union evidence of the required coverage and bond, if required, before commencing the installation work. The additional pumps and tanks shall be maintained by the Union lessee dealer at the Union lessee dealer's sole cost and expense. In the event of any leak into the environment from the additional pumps or tanks or the use of the additional pumps or tanks in a manner that is otherwise unsafe or prohibited by applicable law or regulation, the Union lessee dealer shall immediately cease using the additional pumps and tanks and shall immediately, at his sole cost and expense, correct all of the problems. When he has corrected the problems to Union's satisfaction, the Union lessee dealer may resume using the additional pumps and tanks. In using and maintaining the additional pumps and tanks, the Union lessee dealer shall comply with all applicable laws and regulations and shall indemnify and hold Union harmless against all claims of any kind for injury or loss resulting from or arising out of the Union lessee dealer's handling, storage, dispensing or sale of any non-Union motor fuel at the service station. The Union lessee dealer shall, at his sole cost and expense, include the additional pumps and tanks within the insurance coverage that each Union lessee dealer is otherwise required to carry;

(b) If Union does not own the service station premises in fee but leases the land, the station or both from a third party, any installation or operation by the Union lessee dealer of additional pumps and tanks shall be subject to the Union lessee dealer's obtaining all necessary consents that may be required by Union's lessor, and the Union lessee dealer shall remove the pumps and tanks before the expiration of the third-party lease with Union, if required by Union's lessor. In the event that Union's rent to the lessor or from the Union lessee dealer is based on gallonage sold at the service station, the Union lessee dealer shall execute any required verification as to sales of non-Union motor fuels; and

(c) The Union lessee dealer shall take all steps now required by Union to protect Union's trademarks and shall take all future steps required by Union to protect Union's trademarks so long as those future steps are not prohibited by law.

6. As the following terms are used in this Settlement Agreement, the following definitions shall apply:

(a) "Lessee dealer" shall mean each person or entity within the United States who has leased a gasoline service station for the sale at retail of motor fuels under any of his lessor's trademarks and has purchased motor fuels from the lessor for sale at retail under any of the lessor's trademarks at any time from May 11, 1967 to the present;

(b) "Union lessee dealer" shall mean a lessee dealer within the United States who has leased a gasoline service station from Union for the sale at retail of motor fuels and purchased motor fuels from Union for sale at retail under any Union trademark at any time from May 11, 1967 to the present;

(c) "Union trademarks" shall mean any source marks, trademarks, tradenames, logos, emblems, dispensing pump designs, color combinations associated with Union motor fuels, brands or brand names now owned or used, or that in the future may be owned or used, by Union in connection with sale of Union motor fuel;

(d) "Union motor fuel" shall mean any gasoline or other motor fuel sold or provided by Union to a Union lessee dealer as Union branded gasoline or motor fuel. As between Union and Union lessee dealers, Union shall be the sole determiner of the specifications, grades, types and sources of any Union motor fuel;

(e) "Non-Union motor fuel" shall mean any motor fuel not sold or provided by Union to a Union lessee dealer as Union motor fuel; and

(f) The requirement that a Union lessee dealer shall "buy and resell a representative quantity of Union motor fuels" shall mean that a Union lessee dealer must purchase and continuously stock and offer for sale, utilizing pumps and tanks provided by Union for that purpose, all grades of Union gasoline normally marketed by Union through lessee dealers generally in the same marketing area, in such quantities as are necessary to satisfy customer demand for those grades. If Union has installed pumps and tanks at the station specifically for the purpose of dispensing Union diesel fuel, the dealer must stock and continuously offer Union diesel fuel for sale.

7. The named plaintiffs and all members of the Rule 23(b)(3) class in these consolidated actions as defined in Class Action Order No. 1 who have not made valid and timely elections to be excluded from the class (collectively referred to in this paragraph as the "releasing parties") hereby release and forever discharge Union and its parent, predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (collectively referred to in this paragraph as the "released parties") from any and all liabilities, claims, indebtendess and causes of action, whether at law or in equity, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the amended complaints or in Plaintiffs' Preliminary Statement of Claim, and the releasing parties (and each of them) shall be barred from commencing, prosecuting or maintaining any claims against the released parties, or any of them, that were alleged or could have been alleged by the releasing parties, or any of them, against the released parties, or any of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in Plaintiffs' Preliminary Statement of Claim or the amended complaints, up to the date of the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement. The provisions of this paragraph and paragraph 14, below, are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Union and the other released parties expressly released in this paragraph.

8. The named plaintiffs and all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in these actions (collectively referred to in this paragraph as the "releasing parties") hereby release and forever discharge Union and its parent, predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (collectively referred to in this paragraph as "the released parties") from any and all liabilities, claims and causes of action for injunctive or declaratory relief arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claims for injunctive or declaratory relief set forth in the amended complaints or Plaintiffs' Preliminary Statement of Claim, and the releasing parties (and each of them) shall be barred from commencing, prosecuting or maintaining any claims for injunctive or declaratory relief against the released parties, or any of them, that were alleged or could have been alleged by the releasing parties, or any of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim for injunctive or declaratory relief set forth in Plaintiffs' Preliminary Statement of Claim or the amended complaints, up to the date of the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement. The provisions of this paragraph and paragraph 14, below, are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Union and the other released parties expressly released in this paragraph.

9. This Settlement Agreement has been executed for the respective parties by counsel for plaintiffs and by counsel for Union, without trial or adjudication of any issue of fact or law raised by the complaints, amended complaints and answers, and shall not be construed as an admission by any party with respect to any issue of fact or law and shall not be considered as evidence in this litigation on behalf of plaintiffs or any nonsettling defendant, *provided, however,* that plaintiffs agree that if Union complies with the terms of this Settlement Agreement, plaintiffs will not assert against Union that the practices, policies and procedures of Union with respect to Union lessee dealers and with respect to lessee dealers (a) violate the Sherman or Clayton acts or (b) are or will be grounds for any claims against Union.

10. Nothing in this Settlement Agreement shall in any way impair or limit any lawful right that Union may have, by contract, statute or otherwise, to terminate, modify or refuse to renew any of its contracts or leases with Union lessee dealers.

11. It is the intention of the parties that this Settlement Agreement not only will end the present litigation but also will prevent future litigation by lessee dealers (including Union lessee dealers) against Union arising out of Union's present marketing policies, practices and procedures.

12. Upon execution of this Settlement Agreement, Union will pay to counsel for plaintiffs the total sum of $1,327,500 ("Settlement Sum"). The Settlement Sum will be held in escrow by counsel for plaintiffs pursuant to order of the court and shall be placed in an interest-bearing account. The Settlement Sum shall be the only amount Union is or will be required to pay pursuant to this Settlement Agreement or any judgment entered in this litigation. Union shall not be liable for any costs, attorneys' fees, expenses or escrow agents' fees or expenses, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum.

13. Plaintiffs may, subject to the approval of the court, use a maximum of three percent of the Settlement Sum for purposes of paying the costs of giving notice to the classes of the settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 22, below, the portion of the Settlement Sum actually disbursed to pay the costs of notice shall not be refundable to Union.

14. The parties agree that, subject to the provisions of paragraphs 7 and 8, above, as to nonsettling defendants, these actions shall be dismissed with prejudice as to Union. Final judgment in favor of Union as set forth in the exhibit to this Settlement Agreement shall be entered by this court in both actions at the time of final approval of this Settlement Agreement.

15. The proposed notice to the classes advising the classes of this Settlement Agreement shall be submitted to counsel for Union to review before submission of the notice to the court. In the event of any dispute between counsel for Union and counsel for plaintiffs about the notice, the court will be asked to resolve the dispute. Plaintiffs and Union will apply to the court for an order requiring all defendants (including Sun and Getty) to provide plaintiffs with lists of their current lessee dealers. Except as provided in the following sentence, Union will not pay the cost of obtaining or preparing any list of current lessee dealers. Union will supply such a list of its dealers (or the best information available) at its sole cost and expense.

16. Plaintiffs agree that in consideration for the payment by Union of the Settlement Sum set forth in paragraph 12, above, if plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of that final judgment (or those judgments) shall be reduced by the greater of—

(a) the amount of the Settlement Sum; or

(b) an amount equal to 5.31% of the dollar amount of the final judgment (or judgments).

It is agreed that this and only this paragraph 16 is provided for the benefit of all defendants (other than Sun and Getty), and any defendant (other than Sun or Getty) may enforce this and only this paragraph 16 against plaintiffs, *provided however*, that Union is not so limited to rights under this paragraph.

17. Union and plaintiffs agree that Union shall not have any responsibility for any allocation of the Settlement Sum among members of the class.

18. Immediately after conclusion of this litigation, plaintiffs' counsel shall return to Union all copies of all documents produced by Union to plaintiffs, to plaintiffs' counsel or to any of their experts (including all copies of documents in the possession of plaintiffs' experts or of any other person or entity and including all copies of Union documents marked as deposition exhibits) except those containing plaintiffs' counsel's or experts' work product. ''Return'' shall mean making the documents available to Union at the offices of Berger & Montague, P.C. Plaintiffs' counsel and plaintiffs' experts shall, at the conclusion of this litigation, also immediately destroy all Union documents containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any documents produced by Union. In addition, at the conclusion of this litigation, plaintiffs and plaintiffs' counsel shall immediately comply with the present provisions of paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph 15 of Class Action Order No. 67 whether or not those orders are subsequently vacated or amended. Plaintiffs' counsel shall certify in writing to counsel for Union that the named plaintiffs, plaintiffs' experts and plaintiffs' counsel have complied with this paragraph.

19. Immediately after conclusion of this litigation, Union shall return to counsel for plaintiffs all copies of all documents in Union's or Union's counsel possession that were produced in discovery proceedings in this litigation (a) by either named plaintiff, (b) by plaintiffs' counsel, (c) by any trial witness designated by plaintiffs or (d) by any person or entity incident to the deposition of Kenneth Black (including copies of documents in the possession of Union's experts or any other person or entity and including all copies of all such documents marked as deposition exhibits) except those containing Union's counsel's work product or a Union expert's work product. Union shall also return to counsel for Sun the documents produced by Sun at the depositions of Messrs. Burton and Comly. ''Return'' shall mean making the documents available at the offices of Schnader, Harrison, Segal & Lewis in Philadelphia, Pennsylvania. Union's counsel shall, at the conclusion of this litigation, also immediately destroy all documents in their possession produced in discovery proceedings in this litigation (a) by either named plaintiff, (b) by plaintiffs' counsel, (c) by any trial witness designated by plaintiffs, (d) by any person or entity incident to the deposition of Kenneth Black or (e) by counsel for Sun at the Comly or Burton depositions containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any of those documents. Union and Union's counsel shall certify in writing to plaintiffs' counsel that Union and Union's counsel have complied with this paragraph.

20. This Settlement Agreement is expressly conditioned upon, *inter alia*, the court's entering a Consent Decree and Judgment in the form set forth in the exhibit to this Settlement Agreement.

21. Unless a subsequent change in circumstances occurs that has material adverse effect on plaintiffs' claims against any nonsettling defendant, plaintiffs will not settle with any nonsettling defendant on terms substantially more favorable to that defendant than to Union unless the more favorable terms are also immediately offered to Union by plaintiffs. If Union accepts the offer, this Settlement Agreement (including, if necessary, the exhibit) will be amended accordingly. If plaintiffs and Union cannot agree on the question of whether the terms of another settlement are ''substantially more favorable to that defendant than to Union,'' they will submit the question to the court for binding resolution. It is understood that, with respect to a monetary settlement, plaintiffs will not, unless plaintiffs follow the procedures set forth in the next sentence, accept in settlement less than that settling defendant's percentage share under the defendants' sharing agreement of a total sum of $25 million and that such a monetary settlement satisfies the intent of this paragraph 21. If plaintiffs do accept a lesser sum than that resulting from the formula described in the preceding sentence, plaintiffs will immediately refund to Union a pro rata portion of the Settlement Sum paid by Union.

"Nonsettling defendant," as used in this paragraph 21, is limited to the following defendants:

Amoco Oil Company
Atlantic Richfield Company
BP Oil Inc.
Chevron Oil Company
Exxon Corporation
Gulf Oil Corporation
Mobil Oil Corporation
Phillips Petroleum Company
Shell Oil Company
Texaco Inc.

22. In the event that the court denies complete approval of this Settlement Agreement or completely approves it but its approval is altered on appeal, or should the contemplated Consent Decree not be made in the exact form set forth in the exhibit or be made but be altered on appeal, then this entire Settlement Agreement shall terminate unless the parties promptly agree to proceed with this Settlement Agreement and Consent Decree as proposed to be modified by the court or by an appellate court. In the event this Settlement Agreement is terminated pursuant to this paragraph, the Settlement Sum (less a maximum of three percent, if previously disbursed incident to giving notice to the classes), plus any accrued interest, shall immediatey be returned to Union. In the event that the court grants approval and enters the Consent Decree in the form attached as an exhibit and in the event that the Consent Decree becomes final and nonappealable, then the Settlement Sum (less any disbursements made incident to giving notice to the classes) may be removed from escrow by plaintiffs subject to further order of the court.

23. This Settlement Agreement contains a full, complete and integrated statement of every term and provision agreed to by the parties. No term or provision in any settlement agreement entered into between plaintiffs and any other defendant for this litigation shall affect this Settlement Agreement (except as provided in paragraph 21, above) or its interpretation. The terms and provisions of this Settlement Agreement are not severable. This Settlement Agreement shall not be orally modified in any respect and can be modified only by the parties' written agreement

24. This Settlement Agreement shall be construed and interpreted in accordance with the laws (other than the choice-of-laws principles) of the Commonwealth of Pennsylvania.

[SIGNATURES OMITTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN, *et al.*, : CIVIL CLASS ACTION
Class Representatives, :
v. :
GULF OIL CORPORATION, *et al.*, : NOS. 71-1137
: 71-254
Defendants :

SETTLEMENT AGREEMENT

(ARCO)

This Settlement Agreement is made this 21st day of September, 1984, by and between Atlantic Richfield (as hereafter defined) and named plaintiffs Paul J. Bogosian and Louis J. Parisi, both individually and on behalf of: (a) all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed timely and valid elections to be excluded from the class, and (b) all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions. Such members of both classes, including the named plaintiffs, are hereafter collectively referred to as "plaintiffs".

WHEREAS, the two above-captioned actions have been instituted against Amerada Hess Corporation; Amoco Oil Company; Atlantic Richfield Company; BP Oil Inc.; Chevron Oil Company; Cities Service Company; Exxon Corporation; Getty Oil Company; Gulf Oil Corporation; Mobil Oil Corporation; Phillips Petroleum Company; Shell Oil Company; Sun Oil Company; Texaco Inc.; and Union Oil Company of California ("defendants"), alleging a conspiracy or conspiracies in violation of Section 1 of the Sherman Act; and

WHEREAS, Atlantic Richfield has asserted defenses and affirmative defenses to all allegations; and

WHEREAS, Atlantic Richfield asserts that its practices, policies and procedures are lawful and reasonable, and Atlantic Richfield denies that it has (or had) entered into any conspiracy (or conspiracies) and denies that it has violated the antitrust laws; and

WHEREAS, the parties hereto desire amicably to resolve their disputes without the necessity for a lengthy and costly trial;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The provisions of this Settlement Agreement applicable to and binding upon Atlantic Richfield shall remain in effect for five (5) years from the date hereof and shall apply only to the operations of Atlantic Richfield, if any, in the fifty states of the United States and in the District of Columbia. Following said five (5) year period, Atlantic Richfield shall have no further obligations pursuant to this Settlement Agreement or pursuant to the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement.

2. Atlantic Richfield agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of motor fuel which Atlantic Richfield lessee dealers may offer for sale or with respect to Atlantic Richfield's contractual and lease provisions with Atlantic Richfield lessee dealers. The foregoing agreement does not constitute an admission or evidence of any past or present violation of law by Atlantic Richfield and shall not be construed as an admission or evidence of any past or present violation of law by Atlantic Richfield.

3. Atlantic Richfield further agrees that the express terms of its leases and motor fuel sales contracts with Atlantic Richfield lessee dealers, whether taken individually or together, do not and shall not require any Atlantic Richfield lessee dealer to purchase his entire requirement of motor fuel from Atlantic Richfield. Nothing in this Settlement Agreement is intended to deny Atlantic Richfield the continued rights:

(a) to protect Atlantic Richfield's trademarks by, *inter alia*, requiring that any non-Atlantic Richfield motor fuel sold by any Atlantic Richfield lessee dealer not be sold under Atlantic Richfield trademarks or as Atlantic Richfield motor fuel, and to require any Atlantic Richfield lessee dealer to adhere strictly to the terms of his contracts with Atlantic Richfield relating to the protection of Atlantic Richfield's trademarks and the guidelines issued by Atlantic Richfield to Atlantic Richfield lessee dealers from time to time relating to the protection of Atlantic Richfield's trademarks;

(b) to require Atlantic Richfield lessee dealers to comply strictly with the provisions of their leases and motor fuels sales contracts and other contracts with Atlantic Richfield so long as said provisions are not in violation of the provisions of this Settlement Agreement;

(c) to be indemnified and held harmless by the Atlantic Richfield lessee dealer against all claims of any kind for injury or loss resulting from or arising out of such Atlantic Richfield lessee dealer's handling, storage, dispensing and/or sale of any non-Atlantic Richfield motor fuel at the leased premises, and

(d) to make deliveries of Atlantic Richfield motor fuels to any Atlantic Richfield lessee dealer in minimum delivery quantities, as specified by Atlantic Richfield from time to time for Atlantic Richfield lessee dealers generally in the same marketing area;

(e) to require Atlantic Richfield lessee dealers to maintain and continue to dispense representative quantities of Atlantic Richfield motor fuels for resale to the public through pumps bearing Atlantic Richfield's trademark; and

(f) to require any Atlantic Richfield lessee dealer, to the extent permitted by law: (i) to sell only Atlantic Richfield motor fuels through tanks and pumps furnished by Atlantic Richfield, and (ii) to purchase stated minimum quantities of Atlantic Richfield motor fuels for resale through pumps and tanks furnished by Atlantic Richfield.

4. For purposes of discharging all of its obligations under paragraph 3 hereof, Atlantic Richfield agrees to provide Atlantic Richfield lessee dealers the opportunity to install an additional pump(s) and tank(s), along with lines, pipes, hoses and other ancillary equipment incident thereto (hereafter collectively referred to as ''Additional Equipment'') for the purpose of selling non-Atlantic Richfield motor fuel in accordance with the procedures and limitations prescribed in paragraph 5 hereof.

5. For purposes of discharging all of its obligations under paragraph 3 hereof, Atlantic Richfield may reasonably withhold its consent to the installation of Additional Equipment (and still have met all of its obligations under paragraph 3 hereof) unless the Atlantic Richfield lessee dealer complies with the following procedures:

(a) Any installation of Additional Equipment to dispense non-Atlantic Richfield motor fuel shall be upon written notice by the Atlantic Richfield lessee dealer, at the sole cost and expense of the Atlantic Richfield lessee dealer and pursuant to engineering plans and specifications previously submitted to and approved in writing by Atlantic Richfield (hereafter collectively referred to as ''Installation Plans''). Atlantic Richfield shall not unreasonably withhold its approval of the Installation Plans, but Atlantic Richfield may require that the proposed installation be workmanlike and structurally sound, conform to the standards contemporaneously employed by Atlantic Richfield (which standards Atlantic Richfield shall make available to the Atlantic Richfield lessee dealer upon request), be performed by a qualified contractor, comply with all applicable laws and regulations, and not interfere with acccss to, use of, maintenance or repair of Atlantic Richfield's existing facilities and equipment dispensing Atlantic Richfield branded motor fuel to the public. It is acknowledged, however, that during the actual performance of the installation work there may be some unavoidable interference with access to Atlantic Richfield's existing facilities, which interference the Atlantic Richfield lessee dealer agrees to keep to a minimun. To the extent that Atlantic Richfield's signature shall be required for any permit required by law, the Atlantic Richfield lessee dealer shall indemnify Atlantic Richfield, to its satisfaction, against any claim, cost, liability or expense resulting from any error, omission or other impropriety or deficiency in the application for such permit.

(b) If the station premises are leased from, or subject to a mortgage or other security interest held by a third person, and the consent of such lessor, mortgagee or other third person is required for the proposed installation of the Additional Equipment, such consent(s) shell have been previously given in writing and Atlantic Richfield shall not be required to go to any expense or to give up any consideration for such consent(s). Such consent(s) may provide that at the final termination of the underlying lease from the lessor to Atlantic Richfield, the Atlantic Richfield lessee dealer shall remove the Additional Equipment and restore the premises to its previous condition, but in the event that the consent does not so provide, it shall provide that Atlantic Richfield shall have the right to remove the Additional Equipment and restore the premises to its previous condition at Atlantic Richfield's sole election and expense without further consent by or agreement of the Atlantic Richfield lessee dealer.

(c) The Atlantic Richfield lessee dealer at his sole expense shall obtain and maintain at all times during the installation work (i) workmen's compensation insurance in statutory limits for all eligible workmen engaged in the installation work, (ii) public liability insurance, in which Atlantic Richfield shall be among the named insureds, for bodily injury and death, and property damage with the coverage limits that each Atlantic Richfield lessee dealer is then required to carry, (iii) builder's all risk insurance in an amount equal to the value of the completed installation, and (iv) if required by Atlantic Richfield, a completion bond and/or a payment and performance bond for the installation work with a surety or sureties satisfactory to Atlantic Richfield, guaranteeing completion of the installation work as described by the Installation Plans within forty-five days of the commencement of the actual work (acts of God excepted), providing for the removal of all work and the restoration of the property to its pre-existing state within such forty-five day period should the Atlantic Richfield lessee dealer abandon or be unable to complete the installation work, and providing for the removal of or indemnity against liens or claims arising from the installation work. The Atlantic Richfield lessee dealer shall submit to Atlantic Richfield evidence of such coverage and bond, if required, prior to commencing the installation work.

(d) Atlantic Richfield may, through an authorized member of its Marketing Engineering Group, inspect the installation work in progress at all reasonable times. If Atlantic Richfield shall find any material variance from the Installation Plans, the Atlantic Richfield lessee dealer shall take appropriate corrective action promptly after receipt of notice from Atlantic Richfield describing such variance. Atlantic Richfield may make a final inspection of the installation work upon completion or substantial completion, including inspection of the Additional Equipment. The Atlantic Richfield lessee dealer shall promptly perform any additional work necessary to correct any material variation from the Installation Plans.

(e) Upon completion and final inspection of the installation work, the Atlantic Richfield lessee dealer shall submit to Atlantic Richfield a copy of a certificate of completion, a certificate of occupancy or other similar document, from the appropriate governmental authority.

(f) Atlantic Richfield shall have the right to restrict the size and the location of any signs displayed at the leased premises which advertise the sale of non-Atlantic Richfield motor fuels and to require that the Atlantic Richfield lessee dealer adequately display signs clearly indicating that such motor fuels are other than Atlantic Richfield motor fuel. Atlantic Richfield shall not have any responsibility to comply with applicable statutes and regulations governing the sale, certification, grade, lead content and price posting for non-Atlantic Richfield motor fuels dispensed by the Atlantic Richfield lessee dealer. The Atlantic Richfield lessee dealer shall take all steps now required by Atlantic Richfield to protect Atlantic Richfield's trademarks and shall take all future steps required by Atlantic Richfield to protect Atlantic Richfield's trademarks so long as said future steps are not prohibited by law; and Atlantic Richfield and the Atlantic Richfield lessee dealer shall comply with the Lanham Act and all applicable federal, state and local statutes, ordinances or regulations governing the labelling or identification of Atlantic Richfield motor fuels.

(g) Unless otherwise agreed by the Atlantic Richfield lessee dealer and Atlantic Richfield, the Atlantic Richfield lessee dealer, upon his departure from the station premises, whether by abandonment, expiration, cancellation, nonrenewal or termination of his lease with Atlantic Richfield, shall have thirty days to remove the Additional Equipment in its entirety and restore the premises to the condition existing prior to the installation work at the Atlantic Richfield lessee dealer's sole cost and expense; or should the Atlantic Richfield lessee dealer not so remove the Additional Equipment within thirty days, title to and ownership of the Additional Equipment shall automatically transfer to Atlantic Richfield at no cost or expense to Atlantic Richfield.

6. It is a fundamental premise of and condition to this Settlement Agreement, and any consent decree issued pursuant thereto, that the Additional Equipment installed by the Atlantic Richfield lessee dealer pursuant to paragraph 5 thereof shall be the sole property of the Atlantic Richfield lessee dealer and that Atlantic Richfield shall have no interest in and shall not be answerable for any claims or liability accruing from such installation or any operation thereof, including without any limitation thereto, liability for claims for environmental injury, damage or degradation of any kind resulting from seepage, leaks or spillage occurring or claimed to occur from the installation or operation of the Additional Equipment. Further, the installation of Additional Equipment provided for by paragraph 5 hereof shall not be deemed to create the relationship of employee and employer, or of partners or joint venturers between Atlantic Richfield and any Atlantic Richfield lessee dealer making such installation. To carry into effect the foregoing provisions, Atlantic Richfield may require the following (and still have met all of its obligations under paragraph 3 hereof):

(a) The Atlantic Richfield lessee dealer shall, at his sole expense, keep the Additional Equipment and the station premises as affected by the Additional Equipment and its installation in good repair and working order and condition, and neat and orderly in a manner consistent with the operation of a first class service station. Without limitation, the Atlantic Richfield lessee dealer shall pay, or reimburse Atlantic Richfield for, all utility charges, municipal fees, any increases in real or personal property taxes, any increases in gallonage rentals that Atlantic Richfield is required to pay its lessor, and other expenses specifically attributable to the Additional Equipment and its operation. To the extent that Atlantic Richfield is aware of any such expenses, Atlantic Richfield shall make them known to the Atlantic Richfield lessee dealer at the time that the Atlantic Richfield lessee dealer first notifies Atlantic Richfield of his intention to install the Additional Equipment. In the event that the station premises are leased by Atlantic Richfield from a third person, and Atlantic Richfield's rent or other obligation to the lessor is based upon gallonage sold at the service station, the Atlantic Richfield lessee dealer shall report and execute any required verification as to sales of non-Atlantic Richfield motor fuel, and pay to Atlantic Richfield the amount of any additional rent that Atlantic Richfield is obligated to pay its lessor on account of the sale of non-Atlantic Richfield motor fuel through the Additional Equipment.

(b) In maintaining and operating the Additional Equipment, the Atlantic Richfield lessee dealer shall comply with all applicable laws and regulations and shall indemnify and hold Atlantic Richfield harmless against all claims of any kind for injury or loss resulting from or arising out of the Atlantic Richfield lessee dealer's handling, storage, dispensing and/or sale of any non-Atlantic Richfield motor fuel at the service station. The Atlantic Richfield lessee dealer shall, at his sole cost and expense, include the Additional Equipment within the insurance coverage that each Atlantic Richfield lessee dealer is otherwise then required to carry and shall cause Atlantic Richfield to be listed as an additional named insured under such coverage. In the event that the Atlantic Richfield lessee dealer's insurance policy does not cover claims of damage, including damage to the environment, resulting from damage to, defects in or obsolescence of the Additional Equipment, or resulting from leaks, seepage or spillage occurring on account of or from the operation of the Additional Equipment, then the Atlantic Richfield lessee dealer also shall, at his sole cost and expense, obtain and maintain throughout the period that the Additional Equipment is in place, whether it is being used or not, a policy of insurance, a bond, or an agreement to indemnify and to hold Atlantic Richfield harmless issued by a financially responsible party satisfactory to Atlantic Richfield in an amount sufficient to cover any such claims which may be asserted.

(c) The Atlantic Richfield lessee dealer shall be solely responsible for conducting surveillance procedures sufficient to protect against and detect any and all seepage, leaks or spillage occurring as a result of the operation of the Additional Equipment. Without limitation to the foregoing obligation, the Atlantic Richfield lessee dealer shall undertake the same leak and water contamination prevention and detection measures with respect to the Additional Equipment which he is now or in the future is required to undertake, or which Atlantic Richfield now or in the future undertakes (which measures Atlantic Richfield shall make known to the Atlantic Richfield lessee dealer), with respect to Atlantic Richfield equipment located at or on Atlantic Richfield leased service station premises. The Atlantic Richfield lessee dealer shall immediately report to Atlantic Richfield any detectable loss of any motor fuel, water in excess of one inch in any product storage tank, any indication of any failure or defect in the Additional Equipment or any component thereof, any change in the condition of the land or surface adjacent to the pumps and dispensers, any other event which would require notification to Atlantic Richfield if it related to equipment furnished by Atlantic Richfield, or any other evidence or indication of any leak into the environment. In the event of any leak, suspected leak or the occurrence of any of the foregoing indications of a leak or contamination, the Atlantic Richfield lessee dealer shall immediately cease using the Additional Equipment in its entirety, shall immediately remove any motor fuel remaining in the tank or tanks which are suspected of leaking, shall immediately notify Atlantic Richfield, and shall promptly, at his sole cost and expense, investigate, repair and correct the source and consequences of such leak or contamination. Upon completion of all necessary corrective work, including any and all work that may be required by any governmental authority, the Atlantic Richfield lessee dealer may upon notice to Atlantic Richfield resume use of the Additional Equipment.

(d) Atlantic Richfield shall have the same rights respecting the inspection of the Additional Equipment that it now has or may in the future have with respect to Atlantic Richfield equipment located at or on Atlantic Richfield leased service station premises.

(e) To the extent the Atlantic Richfield lessee dealer is permitted by law or contract to devise, bequeath, sublet, assign or otherwise transfer his entire leasehold interest, he may also so transfer, at his option, his ownership interest in the Additional Equipment, provided that any person to whom such Additional Equipment is transferred shall accept and agree to all of the procedures prescribed herein. If the Atlantic Richfield lessee dealer does transfer his leasehold interest, but chooses not to transfer his interest in the Additional Equipment, he shall transfer title to and ownership of the Additional Equipment to Atlantic Richfield at no cost or expense to Atlantic Richfield. In no event may the Atlantic Richfield lessee dealer in any other manner transfer his ownership interest in the Additional Equipment separate and apart from a transfer of his entire leasehold interest.

7. Atlantic Richfield has the right to replace, enlarge, modify or interconnect the existing Atlantic Richfield tank and pump system at any station leased by an Atlantic Richfield lessee dealer so as to maintain or expand the existing aggregate storage and delivery capacities for Atlantic Richfield motor fuel; provided, however, that none of the rights in this paragraph shall be exercised for the purpose of preventing an Atlantic Richfield lessee dealer who has notified Atlantic Richfield of his intention to install Additional Equipment from doing so.

8. As used herein, the following definitions shall apply:

(a) "Lessee dealer(s)" shall mean each person or entity within the United States who has leased a gasoline service station for the sale at retail of motor fuel under his lessor's trademark and has purchased motor fuels from the lessor for sale at retail under any of the lessor's trademarks at any time from May 11, 1967 to the present.

(b) "Atlantic Richfield lessee dealer(s)" shall mean a lessee dealer within the United States who has leased a gasoline service station from Atlantic Richfield for the sale at retail of motor fuel and purchased motor fuel from Atlantic Richfield for sale at retail under Atlantic Richfield's trademark(s) at any time from May 11, 1967 to the present. The term shall not include the dealer at any station thereafter sold by Atlantic Richfield.

(c) "Atlantic Richfield trademark(s)" shall mean any source marks, trademarks, trade names, logos, emblems, dispensing pump designs, color combinations associated with Atlantic Richfield motor fuels, brands or brandnames now owned or used, or which in the future may be owned or used, by Atlantic Richfield in connection with sale of Atlantic Richfield motor fuel.

(d) "Atlantic Richfield motor fuel(s)" shall mean any gasoline or other motor fuel sold or provided by Atlantic Richfield to an Atlantic Richfield lessee dealer as Atlantic Richfield branded gasoline or motor fuel. As between Atlantic Richfield and any Atlantic Richfield lessee dealer, Atlantic Richfield shall be the sole determiner of the specifications, grades, types and sources of "Atlantic Richfield motor fuel."

(e) "Non-Atlantic Richfield motor fuel(s)" shall mean any gasoline or other motor fuel not sold or provided by Atlantic Richfield to an Atlantic Richfield lessee dealer as Atlantic Richfield branded gasoline or motor fuel.

(f) "Representative quantities of Atlantic Richfield motor fuels" shall mean a sufficient amount of each grade and type of Atlantic Richfield motor fuels offered by Atlantic Richfield to the Atlantic Richfield lessee dealer for resale through pumps bearing the Atlantic Richfield trademark to meet the customer demand of the Atlantic Richfield lessee dealer.

(g) "Atlantic Richfield" shall mean Atlantic Richfield Company, its predecessor, subsidiaries, divisions and affiliates selling motor fuel to Atlantic Richfield lessee dealers within the United States.

(h) "United States" shall mean the 50 states and the District of Columbia.

9. The named plaintiffs and all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed valid and timely elections to be excluded from the class (hereinafter collectively referred to in this paragraph as the "releasing parties") hereby release and forever discharge Atlantic Richfield and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as "the released parties") from any and all liabilities, claims, indebtedness and causes of action, whether at law or in equity, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the Amended Complaints, Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, and the releasing parties (and each of them) shall be barred from prosecuting any claims against the released parties, or any one of them, which were alleged or could have been alleged by the releasing parties, or any one of them, against the released parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the Amended Complaints, Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 16 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Atlantic Richfield and the other released parties expressly released in this paragraph.

10. The named plaintiffs and all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions (hereinafter collectively referred to in this paragraph as the "releasing parties") hereby release and forever discharge Atlantic Richfield and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as "the released parties") from any and all liabilities, claims, and causes of action for injunctive or declaratory relief arising under the antitrust or trademark laws of the United States or of any state, including without limitation, any claims for injunctive or declaratory relief set forth in the Amended Complaints, Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, and the releasing parties (and each of them) shall be barred from prosecuting any claims for injunctive or declaratory relief against the released parties, or any of them, which were alleged or could have been alleged by the releasing parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim for injunctive or declaratory

relief set forth in the Amended Complaints, Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 16 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Atlantic Richfield and the other released parties expressly released in this paragraph.

11. This Settlement Agreement has been executed for the respective parties hereto, by counsel for plaintiffs and by counsel for Atlantic Richfield, and without trial or adjudication of any issue of fact or law raised by the complaints and answers, and shall not be construed as an admission by any party with respect to any such issue of fact or law and shall not be considered as evidence in this litigation on behalf of any non-settling defendant. Provided, however, that plaintiffs have agreed that, in light of the terms and conditions of paragraphs 1 through 8 of this Settlement Agreement and paragraphs 5 through 12 of the Order and Consent Decree, Atlantic Richfield's policies, practices and procedures with respect to Atlantic Richfield lessee dealers and other lessee dealers do not violate the antitrust or trademark laws of the United States or any state; and that if Atlantic Richfield complies with the terms of this Settlement Agreement and the Order and Consent Decree, Atlantic Richfield's policies, practices and procedures as provided for therein do not violate the antitrust or trademark laws of the United States or any state. If there is compliance, plaintiffs shall not assert that Atlantic Richfield's policies, practices and procedures with respect to Atlantic Richfield lessee dealers or lessee dealers violate the antitrust or trademark laws of the United States or any state or are or will be grounds for any claims thereunder against Atlantic Richfield.

12. Nothing in this Settlement Agreement shall in any way impair or limit any lawful right that Atlantic Richfield may have, by contract, statute or otherwise, to terminate, modify or refuse to renew any of its contracts or leases with Atlantic Richfield lessee dealers, including, without limitation, any lawful right to terminate or refuse to renew the lease and sales contract of any Atlantic Richfield lessee dealer who materially breaches any provision of this Settlement Agreement.

13. It is the intention of the parties hereto that this Settlement Agreement will not only end the present litigation, but also will prevent future litigation by lessee dealers (including Atlantic Richfield lessee dealers) against Atlantic Richfield arising out of Atlantic Richfield's present marketing policies, practices and procedures.

14. Upon execution of this Settlement Agreement, Atlantic Richfield shall pay to counsel for plaintiffs the total sum of $2,027,500 ("Settlement Sum"). The Settlement Sum shall be held in escrow by counsel for plaintiffs pursuant to order of the Court and shall be placed in an interest-bearing account. The Settlement Sum shall be the only amount Atlantic Richfield is required to pay pursuant to this Settlement Agreement or pursuant to any judgment(s) subsequently entered in this litigation. Atlantic Richfield shall not be liable for any costs or attorneys' fees, expenses, escrow agents' fees or expenses, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum.

15. Plaintiffs may, subject to the approval of the Court, use a maximum of three percent (3%) of the Settlement Sum for purposes of paying the costs of giving notice to the classes of the settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 24 hereof, any portion of the Settlement Sum actually disbursed to pay such costs of notice (up to a maximum of three percent (3%) of the Settlement Sum) shall not be refundable to Atlantic Richfield.

16. The parties agree that, subject to the provisions of paragraphs 9 and 10 hereof as to non-settling defendants, the above-captioned actions shall be dismissed with prejudice as to Atlantic Richfield. Final judgment in favor of Atlantic Richfield as set forth in Exhibit A shall be entered by the District Court in both actions at the time of final approval of this Settlement Agreement.

17. The proposed notice to the classes advising the classes of this Settlement Agreement shall be submitted to counsel for Atlantic Richfield for review and approval prior to submission of the notice to the District Court. In the event of any dispute between counsel for Atlantic Richfield and counsel for plaintiffs as to the form or substance of the notice, the District Court will resolve the dispute. Plaintiffs and Atlantic Richfield shall apply to the Court for an Order requiring all defendants (including Sun and Getty) to provide plaintiffs with lists of their current lessee dealers. Atlantic Richfield shall not pay the costs of obtaining or preparing any such lists of current lessee dealers, except that Atlantic Richfield shall supply a list of current Atlantic Richfield lessee dealers (or the best information available) at its sole cost and expense.

18. Plaintiffs agree that in consideration for the payment by Atlantic Richfield of the Settlement Sum set forth in paragraph 14 hereof, if plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of said final judgment (or judgments) shall be reduced by the greater of:

(a) the amount of the Settlement Sum; or

(b) an amount equal to 8.11% of the dollar amount of said final judgment (or judgments).

It is agreed that this and only this paragraph 18 is provided for the benefit of all defendants (other than Sun and Getty), and any defendant (other than Sun or Getty) may enforce this and only this paragraph 18 against plaintiffs, provided however that Atlantic Richfield's rights under this paragraph are in addition to its rights under the other provisions of this Settlement Agreement.

19. Atlantic Richfield and plaintiffs agree that Atlantic Richfield shall not have any responsibility for any allocation of the Settlement Sum among members of the class.

20. Immediately after the conclusion of this litigation, plaintiffs' counsel shall return to Atlantic Richfield all copies of all documents produced by Atlantic Richfield to plaintiffs, to plaintiffs' counsel or to any of plaintiffs' experts (including all copies of documents in the possession of plaintiffs' experts or any other person or entity) except those containing plaintiffs' counsels' work product or plaintiffs' experts' work product. "Return" shall mean making said documents available to Atlantic Richfield at the offices of Berger & Montague. Plaintiffs'

counsel and plaintiffs' experts shall, at the conclusion of this litigation, also immediately destroy all Atlantic Richfield documents containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any documents produced by Atlantic Richfield. In addition, at the conclusion of this litigation, plaintiffs and plaintiffs' counsel shall immediately comply with the present provisions of paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph 15 of Class Action Order No. 67 whether or not such Class Action Orders are subsequently vacated or amended. Plaintiffs' counsel shall certify in writing to counsel for Atlantic Richfield that plaintiffs, plaintiffs' experts and plaintiffs' counsel have complied with this paragraph.

21. Immediately after conclusion of this litigation, Atlantic Richfield shall return to counsel for plaintiffs all copies of all documents in Atlantic Richfield's or Atlantic Richfield's counsel's possession which were produced in discovery proceedings in this litigation: a) by either named plaintiff; b) by plaintiffs' counsel; c) by any trial witness designated by plaintiffs; or d) by any person or entity incident to the deposition of Kenneth Black (including copies of documents in the possession of Atlantic Richfield's experts or any other person or entity and including all copies of all such documents marked as deposition exhibits) except those containing Atlantic Richfield's counsel's work product or Atlantic Richfield's expert's work product. Atlantic Richfield shall also return to counsel for Sun the documents produced by Sun at the depositions of Messrs. Burton and Comly. "Return" shall mean making said documents available at the offices of Ballard, Spahr, Andrews & Ingersoll in Philadelphia, Pennsylvania. Atlantic Richfield's counsel shall, at the conclusion of this litigation, also immediately destroy any and all documents in their possession produced in discovery proceedings in this litigation: a) by either named plaintiff; b) by plaintiffs' counsel, c) by any trial witness designated by plaintiffs; d) by any person or entity incident to the deposition of Kenneth Black; or e) by counsel for Sun at the Comly or Burton depositions containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any such documents. Atlantic Richfield's counsel shall certify in writing to plaintiffs' counsel that Atlantic Richfield and Atlantic Richfield's counsel have complied with this paragraph.

22. This Settlement Agreement is expressly conditioned upon, *inter alia*, the Court entering a Consent Decree and Judgment in the form set forth in Exhibit A to this Settlement Agreement.

23. Unless a subsequent change in circumstances occurs which has a material adverse effect on plaintiffs' claims against any non-settling defendant, plaintiffs will not settle with any non-settling defendant on terms (including injunctive or declaratory relief) substantially more favorable to that defendant than to Atlantic Richfield unless said more favorable terms are also immediately offered to Atlantic Richfield by plaintiffs. If Atlantic Richfield accepts said offer, this Settlement Agreement (including, if necessary, Exhibit A) will be amended accordingly. If the parties hereto cannot agree whether the terms offered to a non-settling defendant are "substantially more favorable to that defendant than to Atlantic Richfield," the dispute will be submitted to the District Court for binding resolution.

A. "Non-settling defendant", as used herein, is limited to the following defendants:

American Oil Company
Chevron, U.S.A.
Exxon Corporation
Gulf Oil Corporation
Mobil Oil Company
Shell Oil Company
Texaco, Inc.
Union Oil Company of California
Phillips Petroleum Company
BP Oil Inc.

B. It is understood that with respect to a monetary settlement, plaintiffs will not, unless plaintiffs follow the procedures set forth in the second sentence of this paragraph 23B, accept in settlement less than that settling defendant's percentage share under the Defendants' Sharing Agreement as applied to a total sum of $25 million, and that such a monetary settlement satisfies the intent of this paragraph 23. If plaintiffs do accept a lesser sum, plaintiffs will immediately refund to Atlantic Richfield a pro rata portion of the Settlement Sum paid by Atlantic Richfield.

24. In the event that the Court denies complete approval of this Agreement or completely approves it but is reversed on appeal, or should the Consent Decree contemplated hereby not be made in the exact form set forth in Exhibit A or be made but be reversed or modified on appeal, then this entire Settlement Agreement shall terminate unless all parties promptly agree to proceed with this Settlement Agreement and/or Consent Decree as proposed to be modified by the District Court or the Appellate Court. In the event this Settlement Agreement is terminated pursuant to this paragraph, the Settlement Sum (less a maximum of three percent (3%) thereof, if previously disbursed incident to giving notice to the classes), plus any accrued interest, shall be immediately returned to Atlantic Richfield. In the event that the Court grants approval and enters the Consent Decree in the form attached as Exhibit A and in the event that the Consent Decree (Exhibit A) becomes final and non-appealable, then the Settlement Sum (less any disbursements made incident to giving notice to the classes) may be removed from escrow by plaintiffs subject to further Order of the Court.

25. This Settlement Agreement contains a full, complete, and integrated statement of each and every term and provision agreed to by and among the parties hereto. No term or provision in any settlement agreement entered into between plaintiffs and any other defendant with respect to this litigation shall affect this Settlement Agreement or the interpretation thereof (except as provided in paragraph 23 hereof). The terms and provisions of this Settlement Agreement are not severable. This Settlement Agreement shall not be orally modified in any respect, and can be modified only by the written agreement of the parties hereto.

26. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of law rules of the Commonwealth of Pennsylvania.

(SIGNATURES OMITTED)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN, *et al.*, : CIVIL CLASS ACTION
:
Class Representatives, :
:
v. :
:
GULF OIL CORPORATION, *et al.*, : NOS. 71-1137
: 71-2543
Defendants. :

SETTLEMENT AGREEMENT

(GULF)

This Settlement Agreement is made this 21st day of September, 1984, by and between Gulf Oil Corporation and named plaintiffs Paul J. Bogosian and Louis J. Parisi, both individually and on behalf of: (a) all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed timely and valid elections to be excluded from the class, and (b) all members of the Rule 23(b)(2) class consisting of all present lessee-dealers of all defendants in the above-captioned actions. Such members of both classes, including the named plaintiffs, are hereinafter collectively referred to as ''plaintiffs''.

WHEREAS, the two above-captioned actions have been instituted against Amerada Hess Corporation; Amoco Oil Company; Atlantic Richfield Company; BP Oil Inc.; Chevron Oil Company; Cities Service Company; Exxon Corporation; Getty Oil Company; Gulf Oil Corporation; Mobil Oil Corporation; Phillips Petroleum Company; Shell Oil Company; Sun Oil Company; Texaco Inc.; and Union Oil Company of California (''defendants''), alleging a conspiracy or conspiracies in violation of Section 1 of the Sherman Act; and

WHEREAS, Gulf has answered the Complaint and Amended Complaints denying the material allegations thereof and has filed a Pretrial Memorandum answering plaintiffs' claims and raising affirmative defenses to all such claims; and

WHEREAS, Gulf asserts that its programs, practices, policies and procedures with respect to lessee-dealers, including Gulf lessee-dealers, are lawful and reasonable, and Gulf denies that it has committed any violation of the antitrust laws as alleged in plaintiffs' Amended Complaint, Preliminary Statement of Claims and Pretrial Memorandum or that it has in any other way violated the antitrust laws; and

WHEREAS, the parties hereto desire amicably to resolve their disputes without the necessity for a lengthy and costly trial;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. (A) The provisions of this Settlement Agreement applicable to and binding upon Gulf shall remain in effect for five (5) years from the date hereof and shall apply only to the operations of Gulf, if any, in the fifty states of the United States and in the District of Columbia, subject to the rights and conditions set forth in paragraphs 22 and 23 below.

(B) Following the period called for under paragraph 1(A) above, Gulf shall have no further obligations pursuant to this Settlement Agreement or pursuant to the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement.

2. Gulf agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of motor fuel which Gulf lessee-dealers may offer for sale or with respect to Gulf's contractual and lease provisions with Gulf lessee-dealers.

3. Gulf further agrees that the express terms of its leases and motor fuel sales contracts with Gulf lessee-dealers, whether taken individually or together, do not and shall not require any Gulf lessee-dealer to purchase his entire requirement of motor fuel from Gulf.

4. It is agreed that Gulf's obligations under paragraph 3 above shall be fully discharged if Gulf provides to a Gulf lessee-dealer the opportunity hereinafter described in paragraph 5 below to install additional pumps and tanks in accordance with the procedures and subject to the limitations prescribed in said paragraph 5 for the handling of non-Gulf motor fuels.

5. In the event that a Gulf lessee-dealer desires to sell non-Gulf motor fuel at his leased station he shall provide written notice to Gulf requesting Gulf's consent to the installation of alternate pumps and tanks for the sale of non-Gulf motor fuel, which consent will not be unreasonably withheld by Gulf. After receipt of the written notice from a Gulf lessee-dealer as provided herein, Gulf may withhold its consent (and still be deemed to have met its obligations under this Settlement Agreement) unless the Gulf lessee-dealer

(A) complies with the following procedures:

(i) Any installation of pumps and tanks to dispense non-Gulf motor fuel shall be at the sole cost and expense of the Gulf lessee-dealer and pursuant to plans and specifications previously approved in writing by Gulf; and

(ii) The proposed installation shall be of current design, structurally sound, comply with all applicable laws and regulations, and not interfere with the use of Gulf's existing facilities and access to pumps dispensing Gulf branded motor fuel;

(B) and agrees in writing to assume the following obligations:

(i) The actual performance of the installation work shall be workmanlike. It is acknowledged, however, that some unavoidable interference with access to pumps dispensing Gulf branded motor fuel might occur during the actual performance of the installation work, which interference the Gulf lessee-dealer agrees to keep to a minimum.

(ii) The Gulf lessee-dealer, at his sole expense, shall obtain and maintain at all times during the installation work: a) workmen's compensation insurance in statutory limits for all eligible workmen engaged in the installation work; b) public liability insurance in which Gulf shall be among the named insureds for bodily injury and death and property damage, with coverage limitations that each Gulf lessee-dealer is then required to carry; c) builders' all risk insurance in an amount equal to the value of the completed installation; and d) if required by Gulf, a completion bond and/or a payment and performance bond for the installation work with a surety or sureties satisfactory to Gulf, guaranteeing completion of the installation work as described by the installation plans within forty-five (45) days of the commencement of the actual work (acts of God excepted), providing for the removal of all work and the restoration of the property to its pre-existing state within such forty-five day period should the Gulf lessee-dealer abandon or be unable to complete the installation work, and providing for the removal of or indemnification against liens or claims arising from the installation work. The Gulf lessee-dealer shall submit to Gulf evidence of such coverage and bond, if required, prior to commencing the installation work.

(iii) Such additional pumps and tanks shall be maintained by the Gulf lessee-dealer at the Gulf lessee-dealer's sole cost and expense;

(iv) The Gulf lessee-dealer shall be solely responsible for conducting surveillance procedures sufficient to protect against and detect any and all seepage, leaks or spillage occuring as a result of the operation of the additional pumps and tanks. Without limitation to the foregoing obligation, the Gulf lessee-dealer shall undertake the same leak and water contamination prevention and detection measures with respect to the additional pumps and tanks which he is now or in the future is required toundertake, or which Gulf now or in the future undertakes (which measures Gulf shall make known to the Gulf lessee-dealer), with respect to Gulf's pumps and tanks located at the Gulf leased service station premises. The Gulf lessee-dealer shall immediately report to Gulf any detectable loss of any motor fuel, water in excess of one inch in any product storage tank, any indication of any failure or defect in the additional pumps and tanks or any components thereof, any change in the condition of the land or surface adjacent to the pumps and tanks, any other event which would require notification to Gulf if it related to pumps and tanks furnished by Gulf, or any other evidence or indication of any leak into the environment. In the event of any leak, suspected leak or the occurrence of any of the foregoing indications of a leak or contamination, the Gulf lessee-dealer shall immediately cease using such additional pumps and tanks, shall immediately remove any motor fuel remaining in the tank or tanks which are suspected of leaking, shall immediately notify Gulf, and shall promptly, at his sole cost and expense, investigate, repair and correct the source and consequences of such leak or contamination. Upon completion of all necessary corrective work, including any and all work that may be required by any governmental authority, the Gulf lessee-dealer may upon notice to Gulf resume use of the additional pumps and tanks.

(v) In using and maintaining the additional pumps and tanks, the Gulf lessee-dealer shall comply with all applicable laws and regulations and shall indemnify and hold Gulf harmless against all claims of any kind resulting from or arising out of the Gulf lessee-dealer's handling, storage, dispensing and/or sale of any non-Gulf motor fuel and the installation, maintenance, and removal of any related equipment at the service station. Gulf will not accept any liability to the Gulf lessee-dealer, the public or to any governmental entity in connection with the Gulf lessee-dealer's handling, storage, dispensing and/or sale of any non-Gulf motor fuels, nor will Gulf have any responsibility to comply with applicable statutes and regulations governing the storage, sale, certification, grade and octane or price posting of such motor fuels.

(vi) The Gulf lessee-dealer shall, at his sole cost and expense, include the additional pumps and tanks within the insurance coverage that each Gulf lessee-dealer is otherwise required to carry, including, but not limited to, pollution liability and environmental impairment liability insurance, general liability and fire and extended coverage in amounts to be reasonably specified by Gulf.

(vii) Upon the completion of the installation of alternate tanks and pumps for the sale of non-Gulf motor fuels, Gulf shall have the right to charge the Gulf lessee-dealer additional rent determined in good faith and in the ordinary course of business on the same basis as Gulf motor fuel constitutes a factor in determining rent at the station. In the event the Gulf lessee-dealer pays rent based on gallonage sold at the service station premises, the Gulf lessee-dealer shall also pay rent on the gallonage from all sales of non-Gulf motor fuels, and shall execute any required verification as to sales of non-Gulf motor fuels;

(viii) If Gulf does not own the service station premises in fee but leases the land, the station or both from a third-party, any installation or operation by the Gulf lessee-dealer of such additional tanks and pumps and related equipment shall be subject to the Gulf lessee-dealer obtaining all necessary consents which may be required by or from Gulf's lessor and the Gulf lessee-dealer shall remove such tanks and pumps prior to the expiration of the third-party lease with Gulf, if required by Gulf's lessor. In the event that Gulf's rent to such third party is based upon gallonage sold at the service station premises, the Gulf lessee-dealer shall agree to modify his rental agreement with Gulf to include an obligation to pay rent equal to the increase in Gulf's rent attributable to the sale of non-Gulf motor fuels, and to execute any required verification as to sales of non-Gulf motor fuels;

(ix) The Gulf lessee-dealer shall take all steps required by Gulf to protect Gulf's trademarks so long as said steps are not prohibited by law; and Gulf and the Gulf lessee-dealer shall comply with the Lanham Act and all applicable federal, state and local statutes, ordinances or regulations governing the labeling or identification of Gulf motor fuels;

(x) The Gulf lessee-dealer shall prominently post a sign on any pump used to dispense non-Gulf motor fuels, disclosing to the public that the product being dispensed was not obtained from Gulf. The sign must be sufficiently durable and permanent in nature that it is not readily subject to destruction by the elements or to inadvertent removal by customers, the Gulf lessee-dealer, or the dealer's employees; and

(xi) Signs advertising non-Gulf motor fuels shall not be placed on the same sign pole with signs advertising Gulf branded motor fuel. The Gulf lessee-dealer shall at all times give the dispensing equipment, displays and advertisement for Gulf branded motor fuel as prominent and covenient position as those of non-Gulf motor fuels sold at the service station. The dealer shall not remove, relocate or alter any Gulf installed identification at the service station.

6. Nothing in this Settlement Agreement is intended to deny Gulf the continued right:

(A) to protect Gulf's trademarks, *inter alia*, requiring that any motor fuel sold by Gulf lessee-dealers, which is non-Gulf motor fuel, not be sold under Gulf trademarks or as Gulf motor fuel and to require the Gulf lessee-dealers to adhere strictly to guidelines issued by Gulf to Gulf lessee-dealers from time to time relating to the protection of Gulf's trademarks; and

(B) to require the Gulf lessee-dealers to comply strictly with the provisions of their leases and motor fuels sales contracts and other contracts with Gulf so long as said provisions are not in violation of the provisions of this Settlement Agreement;

(C) to be indemnified and held harmless by the Gulf lessee-dealer against all claims of any kind for violations, injury or loss resulting from or arising out of the Gulf lessee-dealer's handling, storage, dispensing or sale of any non-Gulf motor fuel at the leased premises, and for the installation, maintenance, and removal of any related equipment at the service station; and

(D) to amend at Gulf's discretion, Gulf's currently effective leases, motor fuel sale contracts and other contracts with Gulf lessee-dealers so long as such amendments do not conflict with the provisions of this Settlement Agreement.

7. Gulf shall have the right, consistent with applicable statutes and upon written notice given in accordance with applicable statute or regulation, to terminate the lease and contract of any Gulf lessee-dealer who fails to observe and comply with the conditions, including the definitions, set forth in this Settlement Agreement. In addition, nothing in this Settlement Agreement shall:

(A) in any way impair or limit any lawful right that Gulf has, by contract, statute or otherwise, to terminate, modify or refuse to renew any of its contracts or leases with Gulf lessee-dealers; or

(B) limit any right that Gulf has by contract, statute or otherwise lawfully to rent, loan or lease to a Gulf lessee-dealer pumps and tanks to dispense motor fuels, conditioned expressly or implicitly upon that dealer's agreement to use such facilities only for handling Gulf branded motor fuel.

8. Nothing in this Settlement Agreement shall be construed to require Gulf to permit Gulf lessee-dealers to make sales on the GulfCard of non-Gulf motor fuels or to restrict the right of Gulf to establish the conditions of sale on the Gulf-Card, including the right to charge Gulf lessee-dealers for the use of the GulfCard, or its substitute, if any.

9. As used herein, the following definitions shall apply:

(A) ''lessee-dealer(s)'' shall mean each person or entity within the United States who presently leases a gasoline service station for the sale at retail of motor fuel under his lessor's trademark and purchases motor fuels from the lessor for sale at retail under any of the lessor's trademarks.

(B) ''Gulf lessee-dealer(s)'' shall mean a lessee-dealer within the United States who presently leases a gasoline service station from Gulf for the sale at retail of motor fuel and purchases motor fuel from Gulf for sale at retail under Gulf's trademark(s). The term ''Gulf lessee-dealer'' shall not include any dealer in the Rule 23(b)(2) class at any station hereafter sold, including specifically any dealer in a service station which is, was, or shall be sold pursuant to any divestiture of assets arising out of or related to the Agreement Containing Consent Order dated April 26, 1984, between the Federal Trade Commission, Standard Oil Company of California and Gulf Corporation, executed in connection with the merger between Standard Oil Company of California (now Chevron Corporation) and Gulf.

(C) ''Gulf trademark(s)'' shall mean any source marks, trademarks, trade names, service marks, logos, emblems, dispensing pump designs, color combinations associated with Gulf motor fuels, brands or brand names now owned or used, or which in the future may be owned or used, by Gulf in connection with sale of Gulf motor fuel.

(D) ''Gulf motor fuel(s)'' shall mean any gasoline or other motor fuel sold by Gulf directly to a Gulf lessee-dealer as Gulf branded gasoline or motor fuel, irrespective of the refinery at which such fuel may have been manufactured. As between Gulf and Gulf lessee-dealers, Gulf shall be the sole determiner of the specifications, grades, types and sources of ''Gulf motor fuel.''

(E) ''Non-Gulf motor fuel(s)'' shall mean any motor fuels not sold directly by Gulf to a Gulf lessee-dealer as ''Gulf motor fuel.''

(F) ''Gulf'' shall mean Gulf Corporation, Gulf Oil Corporation, their predecessors, subsidiaries, divisions and affiliates selling motor fuel to Gulf lessee-dealers within the United States.

(G) ''United States'' shall mean the 50 states and the District of Columbia.

10. The named plaintiffs and all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed valid and timely elections to be excluded from the class (hereinafter collectively referred to in this paragraph as the ''releasing parties'') hereby release and forever discharge Gulf and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as the ''released parties'') from any and all liabilities, claims, indebtedness and causes of action, whether at law or in equity, arising under the antitrust or trademark laws of the United States or

of any state, including, without limitation, any claim set forth, or which might have been set forth, in the Amended Complaint, Plaintiffs' Preliminary Statement of Claim, or Pretrial Memorandum and the releasing parties (and each of them) shall be barred from prosecuting any claims against the released parties, or any one of them, which were alleged or could have been alleged by the releasing parties, or any one of them, against the released parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in Plaintiffs' Preliminary Statement of Claim or the Amended Complaints, up to the date of the Order and Consent Decree entered in the above-captioned action pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraphs 16 and 26 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Gulf and the other released parties expressly released in this paragraph.

11. The named plaintiffs and all members of the Rule 23(b)(2) class consisting of all present lessee-dealers of all defendants in the above-captioned actions (hereinafter collectively referred to in this paragraph as the ''releasing parties'') hereby release and forever discharge Gulf and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as ''the released parties'') from any and all liabilities, claims, and causes of action for injunctive or declaratory relief arising under the antitrust or trademark laws of the United States or of any state, including without limitation, any claims for injunctive or declaratory relief set forth, or which might have been set forth, in the Amended Complaint, Plaintiffs' Preliminary Statement of Claim, or Pretrial Memorandum and the releasing parties (and each of them) shall be barred from prosecuting any claims for injunctive or declaratory relief against the released parties, or any of them, which were alleged or could have been alleged by the releasing parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim for injunctive or declaratory relief set forth in Plaintiffs' Preliminary Statement of Claim, Pretrial Memorandum, or the Amended Complaint, up to the date of the Order and Consent Decree entered in the above-captioned action pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraphs 16 and 26 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Gulf and the other released parties expressly released in this paragraph.

12. This Settlement Agreement has been executed for the respective parties hereto, by counsel for plaintiffs and by counsel for Gulf, and without trial or adjudication of any issue of fact or law raised by the complaints and answers, and shall not be construed as an admission by any party with respect to any such issue of fact or law and shall not be considered as evidence in this litigation on behalf of any non-settling defendant. Provided, however, that plaintiffs agree that if Gulf complies with the terms of this Settlement Agreement, plaintiffs will not assert that the programs, practices, policies and procedures of Gulf with respect to Gulf lessee-dealers and with respect to lessee-dealers: a) violate the Sherman or Clayton Acts, or b) are or will be grounds for any claims thereunder against Gulf.

13. It is the intention of the parties hereto that this Settlement Agreement will not only end the present litigation but also will prevent future litigation by plaintiffs against Gulf arising out of Gulf's present marketing programs, policies, practices and procedures.

14. Upon execution of this Settlement Agreement, Gulf shall pay to counsel for plaintiffs, on behalf of plaintiffs, the total sum of $2,637,500.00 (''Settlement Sum''). The Settlement Sum shall be held in escrow by counsel for plaintiffs pursuant to order of the Court and shall be placed in an interest-bearing account. The Settlement Sum shall be the only amount Gulf is required to pay pursuant to this Settlement Agreement or pursuant to any judgment(s) subsequently entered in this litigation. Gulf shall not be liable for any costs or attorney's fees, expenses, escrow agents' fees or expenses, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum, pursuant to Order of the Court.

15. Plaintiffs may, subject to the approval of the Court, use a maximum of three (3) percent of the Settlement Sum for purposes of paying the costs of giving notice to the classes of the settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 26 of this Settlement Agreement, any portion of the Settlement Sum actually disbursed to pay such costs of notice shall not be refundable to Gulf.

16. The parties agree that the above-captioned actions shall be dismissed with prejudice as to Gulf. Final judgment in favor of Gulf as set forth in Exhibit A shall be entered by the District Court in both actions at the time of final approval of this Settlement Agreement.

17. The proposed notice to the classes advising the classes of this Settlement Agreement shall be submitted to counsel for Gulf for review and approval prior to submission of the notice to the District Court. In the event of any dispute between counsel for Gulf and counsel for plaintiffs as to the form or substance of the notice, the District Court will resolve the dispute. Plaintiffs and Gulf shall apply to the Court for an Order requiring all defendants (including Sun and Getty) to provide plaintiffs with lists of their current lessee-dealers. Gulf shall not pay the costs of obtaining or preparing any such list of current dealers except that Gulf shall supply a list of current Gulf lessee-dealers (or the best information available) at its sole cost and expense.

18. Plaintiffs agree that in consideration for the payment by Gulf of the Settlement Sum set forth in paragraph 14 of this Settlement Agreement, if plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of said final judgment (or judgments) shall be reduced by the greater of:

(A) the amount of the Settlement Sum; or

(B) an amount equal to 10.55% of the dollar amount of said final judgment (or judgments).

It is agreed that this and only this paragraph 18 is provided for the benefit of all defendants (other than Sun and Getty), and any defendant (other than Sun or Getty) may enforce this and only this paragraph 18 against plaintiffs, provided however that Gulf's right to enforce the other provisions of this agreement against plaintiffs is not in any way limited by this paragraph.

19. Gulf and plaintiffs agree that Gulf shall not have any responsibility for any allocation of the Settlement Sum among members of the class.

20. Immediately after the conclusion of this litigation, plaintiffs' counsel shall return to Gulf all copies of all documents produced by Gulf to plaintiffs or to plaintiffs' counsel or to any of plaintiffs' experts and copies of all deposition transcripts of all present and former Gulf employees (including all copies of documents or deposition transcripts in the possession of plaintiffs' experts or any other person or entity and also including all copies of all Gulf documents marked as deposition exhibits), except those containing plaintiffs' counsels' work product or plaintiffs' experts' work product. ''Return'' shall mean making said documents available to Gulf at the offices of Berger & Montague. Plaintiffs' counsel and plaintiffs' experts shall, at the conclusion of this litigation, also immediately destroy any and all Gulf documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any documents produced by Gulf or from deposition transcripts of present or former Gulf employees. In addition, at the conclusion of this litigation, plaintiffs and plaintiffs' counsel shall immediately comply with the present provisions of paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph 15 of Class Action Order No. 67 whether or not such Class Action Orders are subsequently vacated or amended. Plaintiffs' counsel shall certify in writing to counsel for Gulf that the named plaintiffs and plaintiffs' experts and plaintiffs' counsel have complied with this paragraph.

21. Immediately after conclusion of this litigation, Gulf shall return to counsel for plaintiffs all copies of all deposition transcripts of the named plaintiffs, plaintiffs' expert witnesses and of Messrs. Black, Burton, Byron and Comly and all copies of all documents in Gulf's or Gulf's counsel's possession which were produced in discovery proceedings in this litigation: a) by either named plaintiff; b) by plaintiffs' counsel; c) by any trial witness designated by plaintiffs: or d) by any person or entity incident to the deposition of Kenneth Black (including copies of documents or deposition transcripts of any of the above in the possession of Gulf's experts or any other person or entity and including all copies of all such documents marked as deposition exhibits) except those containing Gulf's counsel's work product or Gulf's expert's work product. Gulf shall also return to counsel for Sun the documents produced by Sun at the depositions of Messrs. Burton and Comly. ''Return'' shall mean making said documents available at the offices of Kissam, Halpin & Genovese in New York, New York. Gulf's counsel shall, at the conclusion of this litigation, also immediately destroy any and all documents in their possession produced in discovery proceedings in this litigation: a) by either named plaintiff; b) by plaintiffs' counsel, c) by any trial witness designated by plaintiffs; d) by any person or entity incident to the deposition of Kenneth Black; or e) by counsel for Sun at the Comly or Burton depositions containing work product and other documents or deposition transcripts (other than public documents or documents filed in this litigation under seal), including documents or deposition transcripts containing work product, that contain extracts, quotations or other references from any such documents or from the deposition transcripts of plaintiffs and plaintiffs' expert witnesses. Gulf's counsel shall certify in writing to plaintiffs' counsel that Gulf and Gulf's counsel have complied with this paragraph.

22. Nothing in this Settlement Agreement is intended to in any way (a) restrict, impair, limit the rights of, or impose any obligation of any type upon Gulf in connection with any action, discussion or activity related in any way to the merger between Standard Oil Company of California (now Chevron Corporation) and Gulf; (b) restrict, impair or limit the rights of, or provide the basis for any liability against Gulf, Standard Oil Company of California (now Chevron Corporation) or any of their subsidiaries or affiliates to take such actions and have such discussions as they deem necessary to implement and complete the merger between Gulf and Standard Oil Company of California (now Chevron Corporation); or (c) restrict, impair or limit the right of Gulf to negotiate or enter into agreements between Gulf and one or more other defendants with respect to or ancillary to the sale of assets.

Any term of this Settlement Agreement which is in conflict with this paragraph 22 or with the Agreement Containing Consent Order between the Federal Trade Commission, Standard Oil Company of California and Gulf Corporation dated April 26, 1984, and the related Agreement to Hold Separate, shall be null, void and of no effect. Except as so stated, all remaining terms of this Settlement Agreement shall survive.

23. Notwithstanding any other provisions of this Settlement Agreement, in the event that the service station of any Gulf lessee-dealer is merged, assigned or otherwise transferred to Chevron Oil Company (now Chevron U.S.A., Inc.), Chevron shall have the right, at its sole discretion, to terminate and cancel the provisions set forth in paragraphs 2-9, 12 and 13 of this Settlement Agreement and to substitute in its place the comparable terms of the Settlement Agreement between Plaintiffs and Chevron Oil Company (now Chevron U.S.A., Inc.), dated September 21, 1984.

24. This Settlement Agreement is expressly conditioned upon, *inter alia*, the Court entering a Consent Decree and Judgment in the form set forth in Exhibit A to this Settlement Agreement.

25. Unless a subsequent change in circumstances occurs which has a material adverse effect on plaintiffs' claims against any non-settling defendant, plaintiffs will not settle with any non-settling defendant on terms substantially more favorable to that defendant than to Gulf unless said more favorable terms are also immediately offered to Gulf by plaintiffs. If Gulf accepts said offer, this Settlement Agreement (including, if necessary, Exhibit A) will be amended accordingly.

A. ''Non-settling defendant'', as used herein, is limited to the following defendants:

American Oil Company
Atlantic Richfield Company
Chevron, U.S.A.
Exxon Corporation
Mobil Oil Company
Shell Oil Company
Texaco, Inc.

Union Oil Company of California
Phillips Petroleum Company
BP Oil Inc.

B. It is understood that with respect to a monetary settlement, plaintiffs will not, unless plaintiffs follow the procedures set forth in the second sentence of this paragraph 25B, accept in settlement less than that settling defendant's percentage share under the Defendants' Sharing Agreement as applied to a total sum of $25 million, and that such a monetary settlement satisfies the intent of this paragraph 25. If plaintiffs do accept a lesser sum than that resulting from the formula described in the preceding sentence, plaintiffs will immediately refund to Gulf a pro rata portion of the Settlement Sum paid by Gulf.

26. In the event that the Court denies complete approval of this Agreement or completely approves it but is reversed on appeal, or should the Consent Decree contemplated hereby not be made in the exact form set forth in Exhibit A or be made but be reversed or modified on appeal, then this entire Settlement Agreement shall terminate unless all parties promptly agree to proceed with this Settlement Agreement and/or Consent Decree as proposed to be modified by the Court. In the event this Settlement Agreement is terminated pursuant to this paragraph, the Settlement Sum (less a maximum of three percent thereof if previously disbursed incident to giving notice to the classes), plus any accrued interest, shall be immediately returned to Gulf. In the event that the Court grants approval and enters the Consent Decree in the form attached as Exhibit A and in the event that the Consent Decree (Exhibit A) becomes final and non-appealable, then the Settlement Sum (less any disbursements made incident to giving notice to the classes) may be removed from escrow by Plaintiffs subject to further Order of the Court.

27. This Settlement Agreement contains a full, complete, and integrated statement of each and every term and provision agreed to by and among the parties hereto. No term or provision in any settlement agreement entered into between plaintiffs and any other defendant with respect to this litigation shall affect this Settlement Agreement or the interpretation thereof. Except as provided in paragraphs 22 and 23 above, the terms and provisions of this Settlement Agreement are not severable. This Settlement Agreement shall not be orally modified in any respect, and can be modified only by the written agreement of the parties hereto.

28. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of law rules of the Commonwealth of Pennsylvania.

(SIGNATURES OMITTED)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN, *et al.*, : CIVIL CLASS ACTION
Class Representatives, :
v. :
GULF OIL CORPORATION, *et al.*, : NOS. 71-1137
Defendants. : 71-2543

SETTLEMENT AGREEMENT

(EXXON)

This Settlement Agreement is made this 21st day of September, 1984, by and between Exxon Corporation and named plaintiffs Paul J. Bogosian and Louis J. Parisi, both individually and on behalf of: (a) all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed timely and valid elections to be excluded from the class, and (b) all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions. Such members of both classes, including the named plaintiffs, are hereinafter collectively referred to as "plaintiffs".

WHEREAS, the two above-captioned actions have been instituted against Amerada Hess Corporation; Amoco Oil Company; Atlantic Richfield Company; BP Oil Inc.; Chevron Oil Company; Cities Service Company; Exxon Corporation; Getty Oil Company; Gulf Oil Corporation; Mobil Oil Corporation; Phillips Petroleum Company; Shell Oil Company; Sun Oil Company; Texaco Inc.; and Union Oil Company of California ("defendants"), alleging a conspiracy or conspiracies in violation of Section 1 of the Sherman Act; and

WHEREAS, Exxon has answered the complaints and amended complaints and has raised defenses and affirmative defenses to all allegations; and

WHEREAS, Exxon asserts that its practices, policies and procedures are lawful and reasonable, and Exxon denies that it has (or had) entered into any conspiracy (or conspiracies) and denies that it has violated the antitrust laws; and

WHEREAS, the parties hereto desire amicably to resolve their disputes without the necessity for a lengthy and costly trial;

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The provisions of this Settlement Agreement binding upon Exxon shall remain in effect for five (5) years from the date hereof and shall apply only to the operations of Exxon, if any, in the fifty states of the United States and in the District of Columbia. Following said five (5) year period, Exxon shall have no further obligations pursuant to this Settlement Agreement or pursuant to the Order and Consent Decree entered in these actions pursuant to this Settlement Agreement.

2. Exxon agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of motor fuel which Exxon lessee dealers may offer for sale or with respect to Exxon's contractual and lease provisions with Exxon lessee dealers. The foregoing agreement does not constitute an admission or evidence of any past or present violation of law by Exxon and shall not be construed as an admission or evidence of any past or present violation of law by Exxon.

3. Exxon further agrees that the express terms of its leases and motor fuel sales contracts with Exxon lessee dealers, whether taken individually or together, do not and shall not require any Exxon lessee dealer to purchase his entire requirement of motor fuel from Exxon. Nothing in this Settlement Agreement is intended to deny Exxon the following continued rights:

(a) to protect Exxon's trademarks by, *inter alia*, requiring that any non-Exxon motor fuel sold by Exxon lessee dealers, not be sold under Exxon trademarks or as Exxon motor fuel and to require the Exxon lessee dealers to adhere strictly to the guidelines issued by Exxon to Exxon lessee dealers from time to time relating to the protection of Exxon's trademarks;

(b) to require the Exxon lessee dealers to comply strictly with the provisions of their leases and motor fuels sales contracts and other contracts with Exxon so long as said provisions are not in violation of the provisions of this Settlement Agreement;

(c) to be indemnified and held harmless by the Exxon lessee dealer against all claims of any kind for violations, injury or loss resulting from or arising out of the Exxon lessee dealer's handling, storage, dispensing and/or sale of any non-Exxon motor fuel at the leased premises; in this regard, any Exxon lessee dealer who offers for sale any non-Exxon motor fuel shall be required to sign an indemnity letter acknowledging these responsibilities;

(d) to deny the use of the Exxon credit card and other Exxon authorized credit cards in connection with any sale of non-Exxon motor fuel or to impose a credit card service charge in connection with any such sale; and

(e) to amend, at Exxon's sole discretion, Exxon's currently effective leases, motor fuel sales contracts and other contracts with Exxon lessee dealers so long as such amendments are not in violation of the provisions of this Settlement Agreement.

4. For purposes of discharging all of its obligations under paragraph 3, above, Exxon may, at its sole discretion and option, on a station by station basis or otherwise, and with respect to any one or more Exxon lessee dealers, either

(a) allow an Exxon lessee dealer to debrand his pumps in the manner set forth in the guidelines issued by Exxon to Exxon lessee dealers in May, 1982 or in the manner set forth in any guidelines subsequently issued by Exxon that are substantially similar. Nothing herein shall affect Exxon's right, at its sole discretion and option, to modify and interconnect the existing tank end pump system at any station leased by an Exon lessee dealer so as to maintain the aggregate storage and delivery capacities for Exxon motor fuel; or

(b) provide an Exxon lessee dealer the opportunity to add additional pumps and tanks, in accordance with the procedures and limitations prescribed in paragraph 5, below.

Under either alternative (a) or (b), Exxon shall have the right to restrict the size and the location of any signs displayed at the leased premises which advertise the sale of non-Exxon motor fuels and to require that the Exxon lessee dealer adequately display signs to indicate clearly that such motor fuels are other than Exxon motor fuel. Exxon shall not have any responsibility to comply with applicable statutes and regulations governing the sale, certification, grade, octane and price posting for non-Exxon motor fuels dispensed by Exxon lessee dealers.

5. For purposes of discharging all of its obligations under paragraph 3, above, if Exxon, in its sole discretion, chooses to allow an Exxon lessee dealer to install additional pumps and tanks at his leased service station for the purpose of the sale of non-Exxon motor fuel, Exxon may reasonably withhold its consent (and still have met all of its obligations under paragraph 3, above) unless the Exxon lessee dealer complies with the following procedures:

(a) Any installation of pumps and tanks to dispense non-Exxon motor fuel shall be at the sole cost and expense of the Exxon lessee dealer and pursuant to plans and specifications previously approved in writing by Exxon. Exxon shall not unreasonably withhold its consent to such plans and specifications, but Exxon may require that the proposed pumps and tanks be structurally sound, comply with all applicable laws and regulations, and not interfere with the use of Exxon's existing facilities and access to pumps dispensing Exxon motor fuel. The actual performance of the installation work shall be workmanlike. It is acknowledged, however, that some unavoidable interference with access to pumps dispensing Exxon motor fuel might occur during the actual performance of the installation work, which interference the Exxon lessee dealer agrees to keep to a minimum. The Exxon lessee dealer at his sole expense shall obtain and maintain at all times during the installation work (i) workmen's compensation insurance in statutory limits for all eligible workmen engaged in the installation work, (ii) public liability insurance, in which Exxon shall be among the named insureds, for bodily injury and death, and property damage with the coverage limits that each Exxon lessee dealer is then required to carry, (iii) builder's all risk insurance in an amount equal to the value of the completed installation, and (iv) if required by Exxon, a completion bond and/or a payment and performance bond for the installation work with a surety or sureties satisfactory to Exxon, guaranteeing completion of the installation work as described by the installation plans within forty-five days of the commencement of the actual work (acts of God excepted), providing for the removal of all work and the restoration of the property to its pre-existing state within such forty-five day period should the Exxon lessee dealer abandon or be unable to complete the installation work, and providing for the removal of or indemnity against liens or claims arising from the installation work. The Exxon lessee dealer shall submit to Exxon evidence of such coverage and bond, if required, prior to commencing the installation work. Such additional pumps and tanks shall be maintained by the Exxon lessee dealer at the Exxon lessee dealer's sole cost and expense. In the event of any leak into the evnironment from such additional pumps and/or tanks, or the use of such additional pumps and/or tanks in a manner which is otherwise unsafe or prohibited by applicable law or regulation, the Exxon lessee dealer shall immediately cease using such additional pumps and tanks and shall immediately, at his sole cost and expense, correct all such problems. Upon such correction, the Exxon lessee dealer may resume using such additional tanks and pumps. In using and maintaining the additional pumps and tanks, the Exxon lessee dealer shall comply with all applicable laws and regulations and shall indemnify and hold Exxon harmless against all claims of any kind for violations, injury or loss resulting from or arising out of the Exxon lessee dealer's handling, storage, dispensing and/or sale of any non-Exxon motor fuel at the service station. The Exxon lessee dealer shall, at his sole cost and expense, include the additional pumps and tanks within the insurance coverage that each Exxon lessee dealer is otherwise required to carry, including, but not limited to, pollution liability and environmental impairment liability insurance.

(b) If Exxon does not own the service station premises in fee but leases the land, the station or both from a third-party, any installation and/or operation by the Exxon lessee dealer of such additional pumps and tanks shall be subject to the Exxon lessee dealer obtaining all necessary consents which may be required by Exxon's lessor, and the Exxon lessee dealer shall, at Exxon's sole discretion and option, unless prohibited by Exxon's lease with Exxon's lessor or a requirement imposed by Exxon's lessor on the Exxon lessee dealer, and at the sole cost and expense of the Exxon lessee dealer, remove such tanks and pumps the expiration of the Exxon lessee dealer's lease with Exxon. In the event that Exxon's rent to the lessor or from the Exxon lessee dealer is based upon gallonage sold at the service station, the Exxon lessee dealer shall also execute any required verification as to sales of non-Exxon motor fuel.

(c) The Exxon lessee dealer shall take all steps now required by Exxon to protect Exxon's trademarks and shall take all future steps required by Exxon to protect Exxon's trademarks so long as said future steps are not prohibited by law.

6. As used herein, the following definitions shall apply:

(a) "lessee dealer(s)" shall mean each person or entity within the United States who has leased a gasoline service station for the sale at retail of motor fuel under his lessor's trademark and has purchased motor fuels from the lessor for sale at retail under any of the lessor's trademarks at any time from May 11, 1967 to the present.

(b) "Exxon lessee dealer(s)" shall mean a lessee dealer within the United States who has leased a gasoline service station from Exxon for the sale at retail of motor fuel and purchased motor fuel from Exxon for sale at retail under Exxon's trademark(s) at any time from May 11, 1967 to present.

(c) "Exxon trademark(s)" shall mean any source marks, trademarks, trade names, slogans, service marks, logos, emblems, dispensing pump designs, color combinations associated with Exxon motor fuels, brands or brandnames now owned or used, or which in the future may be owned or used, by Exxon in connection with sale of Exxon motor fuel.

(d) "Exxon motor fuel(s)" shall mean any gasoline or other motor fuel sold or provided by Exxon to an Exxon lessee dealer as Exxon branded gasoline or motor fuel. As between Exxon and Exxon lessee dealers, Exxon shall be the sole determiner of the specifications, grades, types and sources of "Exxon motor fuel".

(e) "Non-Exxon motor fuel" shall mean any motor fuel not sold or provided by Exxon to an Exxon lessee dealer as Exxon motor fuel.

(f) "Exxon" shall mean Exxon Corporation, its predecessors, subsidiaries, divisions and affiliates selling motor fuel to Exxon lessee dealers within the United States.

(g) "United States" shall mean the 50 states and the District of Columbia.

7. The named plaintiffs and all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed valid and timely elections to be excluded from the class (hereinafter collectively referred to in this paragraph as the "releasing parties") hereby release and forever discharge Exxon Corporation and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as "the released parties") from any and all liabilities, claims, indebtedness and causes of action, whether at law or in equity, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, and the releasing parties (and each of them) shall be barred from prosecuting any claims against the released parties, or any one of them, which were alleged or could have been alleged by the releasing parties, or any one of them, against the released parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim set forth in Plaintiffs' Preliminary Statement of Claim or the Amended Complaints or Plaintiffs' Pretrial Memorandum, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 14 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Exxon Corporation and the other released parties expressly released in this paragraph.

8. The named plaintiffs and all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions (hereinafter collectively referred to in this paragraph as the "releasing parties") hereby release and forever discharge Exxon Corporation and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as "the released parties") from any and all liabilities, claims, and causes of action for injunctive or declaratory relief arising under the antitrust or trademark laws of the United States or of any state, including without limitation, any claims for injunctive or declaratory relief set forth in the Amended Complaints or Plaintiffs' Preliminary Statement of Claim or Plaintiffs' Pretrial Memorandum, and the releasing parties (and each of them) shall be barred from prosecuting any claims for injunctive or declaratory relief against the released parties, or any of them, which were alleged or could have been alleged by the releasing parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including without limitation, any claim for injunctive or declaratory relief set forth in Plaintiffs' Preliminary Statement of Claim or the Amended Complaints or Plaintiffs' Pretrial Memorandum, up to the date of the Order and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement. The foregoing provisions of this paragraph and paragraph 14 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions except Exxon Corporation and the other released parties expressly released in this paragraph.

9. This Settlement Agreement shall not be considered as evidence in this litigation on behalf of any non-settling defendant. Provided, however, that plaintiffs agree that if Exxon complies with the terms of this Settlement Agreement, plaintiffs will not assert against Exxon that the practices, policies and procedures of Exxon with respect to Exxon lessee dealers and with respect to lessee dealers, (a) violate the Sherman or Clayton Acts or (b) are or will be grounds for any claims thereunder against Exxon.

10. Exxon shall have the right, consistent with applicable statutes and upon written notice given in accordance with applicable statutes or regulations, to terminate the lease and contract(s) of any Exxon lessee dealer who fails to observe and comply with the conditions, including the definitions, set forth in this Settlement Agreement. In addition, nothing in this Settlement Agreement shall in any way impair or limit any lawful rights that Exxon may have, by contract, statute or otherwise, to terminate, modify or refuse to renew any of its contracts or leases with Exxon lessee dealers.

11. It is the intention of the parties hereto that this Settlement Agreement will not only end the present litigation but also will prevent future litigation by lessee dealers (including Exxon lessee dealers) against Exxon arising out of Exxon's present marketing policies, practices and procedures.

12. Upon execution of this Settlement Agreement, Exxon shall pay to counsel for plaintiffs the total sum of $3,255,000.00 (the "Settlement Sum"). The Settlement Sum shall be held in escrow by counsel for plaintiffs pursuant to order of the Court and shall be placed in an interest-bearing account. The Settlement Sum shall be the only amount Exxon is required to pay pursuant to this Settlement Agreement or pursuant to any judgment(s) subsequently entered in this litigation. Exxon shall not be liable for any costs or attorneys' fees, expenses, escrow agents' fees or expenses, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum.

13. Plaintiffs may, subject to the approval of the Court, use a maximum of three (3) percent of the Settlement Sum for purposes of paying the costs of giving notice to the classes of this settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 23 of this Settlement Agreement, any portion of the Settlement Sum actually disbursed to pay such costs of notice (up to a maximum of three (3) percent of the Settlement Sum) shall not be refundable to Exxon.

14. The parties agree that, subject to the provisions of paragraphs 7 and 8 as to non-settling defendants, the above-captioned actions shall be dismissed with prejudice as to Exxon Corporation, and the counterclaim of Exxon Corporation against plaintiff Parisi shall be dismissed with prejudice. Final judgment in favor of Exxon Corporation as set forth in Exhibit A shall be entered by the District Court in both actions at the time of final approval of this Settlement Agreement.

15. The proposed notice to the classes advising the classes of this Settlement Agreement shall be sumitted to counsel for Exxon for review and approval prior to submission of the notice to the District Court. In the event of any dispute between counsel for Exxon and for plaintiffs as to the form or substance of the notice, the District Court will resolve the dispute. Plaintiffs and Exxon shall apply to the Court for an Order requiring all defendants (including Sun and Getty) to provide plaintiffs with lists of their current lessee dealers. Exxon shall not pay the costs of obtaining or preparing any such lists of current lessee dealers except that Exxon shall supply a list of current Exxon lessee dealers (or the best information available) at its sole cost and expense.

16. Plaintiffs agree that in consideration for the payment by Exxon of the Settlement Sum set forth in paragraph 12 of this Settlement Agreement, if plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of said final judgment (or judgments) shall be reduced by the greater of:

(a) the amount of the Settlement Sum; or

(b) an amount equal to 13.02% of the dollar amount of said final judgment (or judgments).

It is agreed that this and only this paragraph 16 is provided for the benefit of all defendants (other than Sun or Getty), and any defendant (other than Sun and Getty) may enforce this and only this paragraph 16 against plaintiffs, provided however that Exxon's rights under this paragraph are in addition to its rights under the other provisions of this Settlement Agreement.

17. Exxon and plaintiffs agree that Exxon shall not have any responsibility for any allocation of the Settlement Sum among members of the class.

18. Immediately after conclusion of this litigation, plaintiffs' counsel shall return to Exxon all copies of all documents produced by Exxon to plaintiffs or to plaintiffs' counsel or to any of plaintiffs' experts (including all copies of documents in the possession of plaintiffs' experts or any other person or entity and including all copies of all Exxon documents marked as deposition exhibits) except those containing plaintiffs' counsel's work product or plaintiffs' experts' work product. "Return" shall mean making said documents available to Exxon at the offices of Berger & Montague. Plaintiffs' counsel and plaintiffs' experts shall, at the conclusion of this litigation, also immediately destroy any and all Exxon documents containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any documents produced by Exxon. In addition, at the conclusion of this litigation, plaintiffs and plaintiffs' counsel shall immediately comply with the present provisions of paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph 15 of Class Action Order No. 67 whether or not such Class Action Orders are subsequently vacated or amended. Plaintiffs' counsel shall also immediately return to Mr. Moe Goldsmith the documents produced by him incident to his deposition. Plaintiffs' counsel shall certify in writing to counsel for Exxon that the named plaintiffs and plaintiffs' experts and plaintiffs' counsel have complied with this paragraph.

19. Immediately after conclusion of this litigation, Exxon shall return to counsel for plaintiffs all copies of all documents in Exxon's or Exxon's counsel's possession which were produced in discovery proceedings in this litigation: a) by either named plaintiff; b) by plaintiffs' counsel; c) by any trial witness designated by plaintiffs; or d) by any person or entity incident to the deposing of Kenneth Black (including copies of documents in the possession of Exxon's experts or any other person or entity and including all copies of all such documents marked as deposition exhibits) except those containing Exxon's counsel's work product or Exxon's expert's work product. Exxon shall also return to counsel for Sun the documents produced by Sun at the depositions of Messrs. Burton and Comly. "Return" shall mean making said documents available at the offices of Morgan, Lewis & Bockius in Philadelphia, Pennsylvania. Exxon's counsel shall, at the conclusion of this litigation, also immediately destroy any and all documents in their possession produced in discovery proceedings in this litigation: a) by either named plaintiff; b) by plaintiffs' counsel; c) by any trial witness designated by plaintiffs; d) by any person or entity incident to the deposition of Kenneth Black; or e) by counsel for Sun at the Comly or Burton depositions containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any such documents. Exxon's counsel shall certify in writing to plaintiffs' counsel that Exxon and Exxon's counsel have complied with this paragraph.

20. Immediately upon the execution of this Settlement Agreement, Exxon shall have no obligation to provide any further pretrial discovery in these actions. The attendance of any present or former Exxon employee at the trial of these actions shall only be pursuant to subpoenas properly issued pursuant to Rule 45 of the Federal Rules of Civil Procedure.

21. This Settlement Agreement is expressly conditioned upon, *inter alia*, the Court entering a Consent Decree and Judgment in the exact form set forth in Exhibit A to this Settlement Agreement.

22. Unless a subsequent change in circumstances occurs which has a material adverse effect on plaintiffs' claims against any non-settling defendant, plaintiffs will not settle with any non-settling defendant on terms substantially more favorable to that defendant than to Exxon unless said more favorable terms are also immediately offered to Exxon by plaintiffs. If Exxon accepts said offer, this Settlement Agreement (including, if necessary, Exhibit A) will be amended accordingly. If the parties hereto cannot agree whether the terms offered to a non-settling

defendant are "substantially more favorable to that defendant than to Exxon", the dispute will be submitted to the District Court for binding resolution.

A. "Non-settling defendant", as used in this paragraph, is limited to the following defendants:

American Oil Company
Atlantic Richfield Company
Chevron, U.S.A.
Gulf Oil Corporation
Mobil Oil Corporation
Shell Oil Company
Texaco, Inc.
Union Oil Company of California
Phillips Petroleum Company
BP Oil Inc.

B. It is understood that with respect to a monetary settlement, plaintiffs will not, unless plaintiffs follow the procedures set forth in the second sentence of this paragraph 22B, accept in settlement, less than that settling defendant's percentage share under the Defendants' Sharing Agreement as applied to a total sum of $25 million, and that such a monetary settlement satisfies the intent of this paragraph 22. If plaintiffs do accept a lesser sum than that resulting from the formula described in the preceding sentence, plaintiffs will immediately refund to Exxon a pro rata portion of the Settlement Sum paid by Exxon.

23. In the event that the Court denies complete approval of this Settlement Agreement or completely approves it but is reversed on appeal, or should the Consent Decree contemplated hereby not be made in the exact form set forth in Exhibit A or be made but be reversed or modified on appeal, then this entire Settlement Agreement shall terminate unless all parties promptly agree to proceed with this Settlement Agreement and/or Consent Decree as proposed to be modified by the District Court or the Appellate Court. In the event this Settlement Agreement is terminated pursuant to this paragraph, the Settlement Sum (less a maximum of three (3) percent of the Settlement Sum, if previously disbursed incident to giving notice to the classes), plus any accrued interest, shall be immediately returned to Exxon. In the event that the Court grants approval and enters the Consent Decree in the form attached as Exhibit A and in the event that the Consent Decree (Exhibit A) becomes final and non-appealable, then the Settlement Sum (less any disbursements made incident to giving notice to the classes) may be removed from escrow by counsel for plaintiffs subject to further Order of the Court.

24. This Settlement Agreement contains a full, complete, and integrated statement of each and every term and provision agreed to by and among the parties hereto. No term or provision in any settlement agreement entered into between plaintiffs and any other defendant with respect to this litigation shall affect this Settlement Agreement (except as provided in paragraph 22 above) or the interpretation thereof. The terms and provisions of this Settlement Agreement are not severable. This Settlement Agreement shall not be orally modified in any respect, and can be modified only by the written agreement of the parties hereto.

25. This Settlement Agreement shall be construed and interpreted in accordance with, the laws of the Commonwealth of Pennsylvania, without regard to the conflicts of law rules of the Commonwealth of Pennsylvania.

[SIGNATURES OMITTED]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL J. BOGOSIAN,
Class Representative,
v.
GULF OIL CORPORATION, *et al.*,
Defendants.

LOUIS J. PARISI,
Class Representative,
v.
GULF OIL CORPORATION, *et al.*,
Defendants.

CIVIL CLASS ACTION

NOS. 71-1137
71-2543

SETTLEMENT AGREEMENT

(AMERADA HESS)

This Settlement Agreement is made this 24th day of September, 1984, by and between Amerada Hess Corporation (Amerada Hess Corporation and its predecessors, subsidiaries, divisions and affiliates being hereinafter referred to as "Hess") and named plaintiffs Paul J. Bogosian and Louis J. Parisi, both individually and on behalf of (a) all members of the Rule 23(b)(3) class in the above-captioned actions as defined in Class Action Order No. 1 who have not filed timely and valid elections to be excluded from the class, and (b) all members of the Rule 23(b)(2) class consisting of all present lessee dealers of all defendants in the above-captioned actions. Such members of both classes, including the named plaintiffs, are hereinafter collectively referred to as "plaintiffs".

WHEREAS, the two above-captioned actions (collectively "*Bogosian*") have been instituted against Amerada Hess Corporation; Amoco Oil Company; Atlantic Richfield Company; BP Oil Inc.; Chevron Oil Company; Cities Service Company; Exxon Corporation; Getty Oil Company; Gulf Oil Corporation; Mobil Oil Corporation; Phillips Petroleum Company; Shell Oil Company; Sun Oil Company; Texaco Inc.; and Union Oil Company of California ("defendants"), alleging a conspiracy or conspiracies in violation of Section 1 of the Sherman Act; and

WHEREAS, Hess answered the amended complaints and raised defenses and affirmative defenses to all allegations and, following the conclusion of all discovery proceedings, Hess asserted in its submissions in support of its motion for summary judgment that plaintiffs have not adduced any evidence of conspiracy or collusion on the part of Hess, and Hess is confident that judgment would be rendered in its favor dismissing the plaintiffs' claims against Hess if the *Bogosian* actions were to proceed through a full trial on the merits; and

WHEREAS, in their pretrial submissions plaintiffs have adduced no evidentiary basis for any award of damages to any lessee dealers of Hess based on sales by Hess even if plaintiffs were successful in establishing liability on the part of defendants in *Bogosian*; and

WHEREAS, an action was commenced and is presently pending in the United States District Court for the Southern District of New York against Hess entitled *James Milonas, et al., and Philip Clarke v. Amerada Hess Corporation*, 73 Civ. 4263 (JMC) (the "*Milonas*" action), which has been certified as a class action on behalf of present and former lessee dealers of Hess, alleging in the First Cause of Action that Hess' practices, policies and procedures with its lessee dealers constitute a violation or violations of the antitrust laws; and

WHEREAS, during the period 1967 to the date of this Settlement Agreement Hess has owned or leased approximately five hundred Hess brand gasoline stations located in fourteen states of the United States, most of which were leased to Lessee Dealers at some time during said period; and

WHEREAS, Hess denies any liability in the *Bogosian* and *Milonas* actions, denies that it has (or had) entered into any conspiracy (or conspiracies), denies that it has violated the antitrust laws and asserts that its practices, policies and procedures were and are lawful and reasonable; and

WHEREAS, a Stipulation of Settlement dated August 22, 1979, was executed by the parties and approved by the Court in *Milonas*, which provided, *inter alia*, as follows:

> "2. Upon approval of this Stipulation by the Court, an order and judgment substantially in the form annexed as Exhibit C shall be entered staying all proceedings which relate to the First Cause of Action pending entry of the final judgment in the *Bogosian* action. Upon a showing of good cause, either party may make an application to the United States District Court for the Southern District of New York to vacate the stay prior to the entry of the final judgment in the *Bogosian* action.

"3. Each member of the *Milonas* class who does not exclude himself from the *Milonas* class will be bound as to Hess by all determinations, judgments and orders in the *Bogosian* action as if he were a party to the *Bogosian* action."

WHEREAS, pursuant to the Stipulation of Settlement in *Milonas* quoted above, plaintiffs' claims under the First Cause of Action in *Milonas* have been stayed pending adjudication of plaintiffs' claims in *Bogosian*; and

WHEREAS, Hess and the plaintiffs in *Bogosian* and *Milonas* desire amicably to resolve their disputes without the necessity for a lengthy and costly trial in *Bogosian* and further lengthy and costly pretrial and trial proceedings in *Milonas*:

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. As used herein, the following definitions shall apply:

(a) "lessee dealer(s)" shall mean each person or entity within the United States who has leased a gasoline service station for the sale at retail of motor fuel under his lessor's trademark and has purchased motor fuels from the lessor for sale at retail under any of the lessor's trademarks at any time from May 11, 1967 to the present.

(b) "Hess lessee dealer(s)" shall mean a lessee dealer within the United States who has leased a gasoline service station from Hess for the sale at retail of motor fuel and purchased motor fuel from Hess for sale at retail under Hess' trademark(s) at any time from May 11, 1967 to the present.

(c) Hess "practices, policies and procedures" shall mean Hess' practices, policies and procedures with respect to Hess lessee dealers and other lessee dealers including Hess' contractual and lease provisions with its lessee dealers.

(d) "Hess trademark(s)" shall mean any source marks, trademarks, trade names, logos, emblems, dispensing pump, station or other designs, color combinations associated with Hess motor fuels, brands or brandnames now owned or used, or which in the future may be owned or used, by Hess in connection with sale of Hess motor fuel.

(e) "Hess" shall mean Amerada Hess Corporation, and its predecessors, successors, subsidiaries, divisions and affiliates selling motor fuel to Hess lessee dealers within the United States.

(f) "United States" shall mean the 50 states and the District of Columbia.

2. Hess agrees that it will not contract, combine or conspire with any other defendant in violation of the Sherman Act with respect to the brands of motor fuel which Hess lessee dealers may offer for sale or with respect to Hess' contractual and lease provisions with Hess lessee dealers. The foregoing agreement does not constitute and shall not be construed as an admission or evidence of any past or present wrongdoing or violation of law by Hess, and Hess specifically denies any such wrongdoing or violation of law.

3. Nothing in this Settlement Agreement is intended to deny Hess the continued right to protect Hess' trademarks by, *inter alia*, requiring that Hess lessee dealers comply with the practices, policies and procedures of Hess including all provisions relating to the protection of Hess' trademarks.

4. The named plaintiffs and all members of the Rule 23(b)(3) class in *Bogosian* as defined in Class Action Order No. 1, and the named plaintiffs and all members of the class which has been certified in *Milonas*, who have not filed valid and timely elections to be excluded from the classes (hereinafter collectively referred to in this paragraph as the "releasing parties"), hereby release and forever discharge Hess and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as "the released parties") from any and all liabilities, claims, indebtedness and causes of action, whether at law or in equity, whether known or unknown, fixed or contingent, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim arising under the Sherman Act or the Clayton Act, whether or not expressly asserted in the *Bogosian* or *Milonas* actions, up to the date of the Final Judgment and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement, and the releasing parties (and each of them) shall be barred from commencing, prosecuting or maintaining any claims against the released parties, or any one of them, which were alleged or could have been alleged by the releasing parties, or any one of them, against the released parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim arising under the Sherman Act or the Clayton Act, whether or not expressly asserted in the *Bogosian* or *Milonas* actions. The foregoing provisions of this paragraph and paragraphs 11 and 17 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendant or other person, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions, except Hess and the other released parties expressly released in this paragraph.

5. The named plaintiffs and all members of the Rule 23(b)(2) class in *Bogosian* consisting of all present lessee dealers of all defendants including all present lessee dealers of Hess (hereinafter collectively referred to in this paragraph as the "releasing parties") hereby release and forever discharge Hess and its predecessors, successors, subsidiaries, divisions, affiliates, past and present directors, officers, agents and employees (hereinafter collectively referred to as "the released parties") from any and all liabilities, claims, and causes of action for injunctive, declaratory or equitable relief, whether known or unknown, fixed or contingent, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claims for injunctive, declaratory or equitable relief based upon the Sherman Act or the Clayton Act, whether or not expressly asserted in the *Bogosian* or *Milonas* actions, up to the date of the Final Judgment and Consent Decree entered in the above-captioned actions pursuant to this Settlement Agreement, and the releasing parties (and each of them) shall be barred from commencing, prosecuting or maintaining any claims for injunctive, declaratory or equitable relief against the released parties, or any of them, which were alleged or could have been alleged by the releasing parties, or any one of them, arising under the antitrust or trademark laws of the United States or of any state, including, without limitation, any claim for injunctive, declaratory or equitable relief

based upon the Sherman Act or the Clayton Act, whether or not expressly asserted in the *Bogosian* or *Milonas* actions. The foregoing provisions of this paragraph and paragraphs 11 and 17 hereof are not intended to, and do not, release or discharge or impair or dismiss the claims against any other defendants or other persons, other than the released parties. Plaintiffs expressly reserve all rights and claims against each and every other person or party, including all defendants in these actions, except Hess and the other released parties expressly released in this paragraph.

6. This Settlement Agreement has been executed for the respective parties hereto by counsel for plaintiffs in *Bogosian* and *Milonas* and by counsel for Hess and shall not be considered as evidence in this litigation on behalf of any non-settling defendant. Plaintiffs in *Bogosian* and *Milonas* agree that in light of the terms and conditions of paragraph 2 of the Settlement Agreement and paragraph 6 of the Final Judgment and Consent Decree, Hess' practices, policies and procedures with respect to Hess lessee dealers and other lessee dealers do not violate the antitrust or trademark laws of the United States or of any state; and that if Hess complies with the terms of the Settlement Agreement and the Final Judgment and Consent Decree, Hess' practices, policies and procedures, to the extent consistent with the Settlement Agreement and the Final Judgment and Consent Decree, shall not be deemed to violate the antitrust or trademark laws of the United States or any other state. If there is such compliance, plaintiffs shall not assert that Hess' practices, policies and procedures violate the antitrust or trademark laws of the United States or any other state, or are or will be grounds for any claims thereunder against Hess.

7. It is the intention of the parties hereto that this Settlement Agreement will not only end the present *Bogosian* and *Milonas* litigations but also will prevent future litigation by lessee dealers (including Hess lessee dealers) against Hess arising out of Hess' present marketing policies, practices and procedures.

8. Nothing in this Settlement Agreement shall in any way impair or limit any lawful right that Hess may have, by contract, statute or otherwise, to terminate, modify or refuse to renew any of its contracts or leases with Hess lessee dealers.

9. Upon execution of this Settlement Agreement, in full settlement and discharge of all claims asserted or which could have been asserted in *Bogosian* or in the First Cause of Action in *Milonas*, Hess shall pay to counsel for plaintiffs in *Bogosian* and *Milonas* the total sum of $955,000 (''Settlement Sum''). The Settlement Sum shall be held in escrow by counsel for plaintiffs pursuant to order of the Court and shall be placed in an interest-bearing account. The Settlement Sum shall be the only amount Hess is required to pay pursuant to this Settlement Agreement or pursuant to any judgment(s) subsequently entered in either *Bogosian* or *Milonas*. Hess shall not be liable for any costs or attorneys' fees, expenses, escrow agents' fees or expenses, or any other costs, fees or expenses incurred or to be incurred in *Bogosian* or *Milonas*, except as provided in the last sentence of paragraph 12, below, and any and all such costs, fees and expenses shall be paid out of the Settlement Sum.

10. Plaintiffs may, subject to the approval of the Court, use a maximum of 3% (three percent) out of the Settlement Sum for purposes of paying the costs of giving notice to the classes of the settlement. In the event that this Settlement Agreement is terminated pursuant to paragraph 18 of this Settlement Agreement, any portion of the Settlement Sum actually disbursed to pay such costs of notice shall not be refundable to Hess.

11. The parties agree that, subject to the provisions of paragraphs 4 and 5 as to non-settling defendants, the *Bogosian* and *Milonas* actions shall be dismissed as to Hess with prejudice. Final judgments in favor of Hess as set forth in Exhibits A and B shall be entered by the District Courts in the *Bogosian* and *Milonas* actions, respectively, at the time of final approval of this Settlement Agreement.

12. The proposed notice to the classes advising the classes of this Settlement Agreement shall be submitted to counsel for Hess for review and approval prior to submission of the notice to the District Court. In the event of any dispute between counsel for Hess and counsel for plaintiffs as to the form or substance of the notice, the District Court will resolve the dispute. Plaintiffs and Hess shall apply to the District Court for an Order requiring all defendants (including Sun and Getty) to provide plaintiffs with lists of their current lessee dealers. Hess shall supply a list of current Hess lessee dealers (or the best information available) at its sole cost and expense.

13. Plaintiffs in *Bogosian* agree that in consideration for the payment by Hess of the Settlement Sum set forth in paragraph 9 of this Settlement Agreement, if plaintiffs obtain a final judgment (or judgments) against any other defendant or defendants in these actions, the dollar amount of said final judgment (or judgments) shall be reduced by the greater of:

(a) the amount of the Settlement Sum; or

(b) an amount equal to 3.82% of the dollar amount of said final judgment (or judgments).

It is agreed that this and only this paragraph 13 is provided for the benefit of all defendants (other than Sun and Getty), and any defendant (other than Sun or Getty) may enforce this and only this paragraph 13 against plaintiffs, provided, however, that Hess' rights under this paragraph are in addition to its rights under the other provisions of this Settlement Agreement.

14. Hess and plaintiffs in *Bogosian* and *Milonas* agree that Hess shall not have any responsibility for any allocation of the Settlement Sum among members of the classes.

15. (a) Immediately after conclusion of this litigation as to Hess, plaintiffs' counsel in *Bogosian* and *Milonas* shall return to Hess all copies of all documents produced by Hess to plaintiffs (including copies of documents in the possession of plaintiffs' experts or any other person or entity) except those containing plaintiffs' counsels' work product or plaintiffs' experts' work product. ''Return'' shall mean making said documents available to Hess at the offices of Berger & Montague. Plaintiffs' counsel shall, at the conclusion of this litigation, also immediately destroy any Hess documents containing work product and other documents (other than public documents or documents filed in this litigation under seal), including documents containing work product, that contain extracts, quotations or other references from any documents produced by Hess. In addition, at the conclusion of this litigation, plaintiffs and plaintiffs' counsel shall immediately comply with the present provisions of paragraph 9 of Class Action Order No. 16 and shall immediately comply with the present provisions of paragraph

15 of Class Action Order No. 67 whether or not such Class Action Orders are subsequently vacated or amended. Plaintiffs' counsel shall certify in writing to Hess' counsel that plaintiffs' counsel have complied with this paragraph 15(a).

(b) Immediately after conclusion of this litigation, Hess' counsel shall return to counsel for plaintiffs all copies of all documents in Hess' or Hess' counsel's possession which were produced in discovery proceedings in *Bogosian* (i) by either named plaintiff, (ii) by plaintiffs' counsel, (iii) by any trial witness designated by plaintiffs, (iv) by any person or entity incident to the deposition of Kenneth Black (including copies of documents in the possession of Hess' experts or any other person or entity and including all copies of all such documents marked as deposition exhibits) or (v) by counsel for Sun at the Comly or Burton depositions, except those documents containing workproduct of Hess' counsel, and such documents containing workproduct shall be destroyed by Hess' counsel upon conclusion of this litigation. ''Return'' shall mean making such documents available at the offices of Milbank, Tweed, Hadley & McCloy in New York, New York. Hess and Hess' counsel shall not be required to return to plaintiffs' counsel transcripts of any depositions taken in this litigation or exhibits marked at any such depositions. Hess' counsel shall certify in writing to plaintiffs' counsel that Hess' counsel have complied with this paragraph.

16. Unless a subsequent change in circumstances occurs which has a material adverse effect on plaintiffs' claims against any other defendant, plaintiffs will not settle with any other defendant on terms substantially more favorable to that defendant than to Hess unless said more favorable terms are also immediately offered to Hess by plaintiffs. If Hess accepts said offer, this Settlement Agreement (including, if necessary, Exhibits A and B) will be amended accordingly. If the parties hereto cannot agree whether the terms offered to another defendant are ''substantially more favorable to that defendant than to Hess'', the dispute will be submitted to the District Court for binding resolution. With respect to a monetary settlement, plaintiffs have stated that they do not intend to accept an amount from any defendant in settlement less than that settling defendant's percentage share under the Defendants' Sharing Agreement as applied to a total sum of $25 million, and that such a monetary settlement satisfies the intent of this paragraph 16. If plaintiffs do accept a lesser sum than that resulting from the formula described above, plaintiffs will immediately refund to Hess a pro rata portion of the Settlement Sum paid by Hess.

17. This Settlement Agreement is expressly conditioned upon, *inter alia*, both Courts in which *Bogosian* and *Milonas* are pending entering the applicable Final Judgment and Consent Decree or Final Order and Judgment in the forms set forth in Exhibits A or B to this Settlement Agreement.

18. In the event that the Court in either *Bogosian* or *Milonas* denies complete approval of this Agreement or completely approves it but is reversed on appeal, or should either the Final Judgment and Consent Decree or Final Order and Judgment contemplated hereby not be made in the exact form set forth in Exhibit A or B, or be made but be reversed or modified on appeal, then this entire Settlement Agreement shall terminate unless all parties promptly agree to proceed with this Settlement Agreement and/or Final Judgment and Consent Decree or Final Order and Judgment as proposed to be modified by the Court or Appellate Court. In the event this Settlement Agreement is terminated pursuant to this paragraph, the Settlement Sum (less a maximum of 3% of the Settlement Sum, if previously disbursed incident to giving notice to the classes), plus any accrued interest, shall be immediately returned to Hess. In the event that the Courts grant approval and enter the Final Judgment and Consent Decree or Final Order and Judgment in the forms attached as Exhibits A and B and in the event that the Final Judgment and Consent Decree and Final Order and Judgment become final and nonappealable, then the Settlement Sum (less any disbursements made incident to giving notice to the classes) may be removed from escrow by Plaintiffs subject to further order of the Court.

19. The provisions of this Settlement Agreement binding upon Hess shall remain in effect for five (5) years from the date hereof and shall apply only to the operations of Hess, if any, in the United States. Following said five (5) years, Hess shall have no further obligations pursuant to this Settlement Agreement or pursuant to the Final Judgment and Consent Decree entered in these actions pursuant to this Settlement Agreement.

20. This Settlement Agreement contains a full, complete and integrated statement of each and every term and provision agreed to by and among the parties hereto. No term or provision in any settlement agreement entered into between plaintiffs and any other defendant with respect to this litigation shall affect this Settlement Agreement (except as provided in paragraph 16 above) or the interpretation thereof. The terms and provisions of this Settlement Agreement are not severable. This Settlement Agreement shall not be orally modified in any respect, and can be modified only by the written agreement of the parties hereto.

[SIGNATURES OMITTED]

Senator **Metzenbaum**. Were there 13 oil companies on the other side?

Mr. **Berger**. There were 15 all told, and I settled with 2 of them several years ago and then the 13 nonsettling defendants folded up on the eve of trial.

Senator **Metzenbaum**. And is it fair to say that these were major oil companies with which the settlements were made?

Mr. **Berger**. Indeed, they were; they were the greatest oil companies in the world.

Senator **Metzenbaum**. Thank you.

This hearing will stand recessed for as long as it takes me to get to the floor and vote and come back. It will probably be about 10 minutes.

[A brief recess was taken.]

Senator **Metzenbaum**. The hearing will come to order.

I want to say to our three witnesses that there will be another vote on the floor of the Senate at 12:30 and then I am due at another meeting that I was to be at at 12, so I am going to be a little bit short with you.

Mr. Berger, your testimony had just about wound up anyhow because I heard the bell ring as I was walking out the door. But why do you not take a minute just to finish up anything you care to say?

Mr. **Berger**. All right. I would just simply say, Senator, that when I began the litigation we had 200,000 in the class; we now have 40,000. There are three basic reasons why, with respect to open supply, the bill is very important and significant.

They are, first of all, that the decree of the court which is entered in the Federal Court in Philadelphia only applies to class members, and there are many retailers of gasoline who are not covered at all by that decree.

Second, it is only effective for a period of 5 years. At the end of the 5-year term, then the decree will no longer be effective. Third, it is a judicial decree and, as the Senator knows, that is not as effective as a congressional act which would be the law of the land.

[The statement follows:]

STATEMENT OF DAVID BERGER, ESQUIRE OF PHILADELPHIA, PENNSYLVANIA TO THE UNITED STATES SENATE, COMMITTEE ON THE JUDICIARY CONCERNING BILL S.1140, THE "MOTOR FUEL SALES COMPETITION IMPROVEMENT ACT OF 1985"

Gentlemen:

My name is David Berger. I am lead counsel in the case of Bogosian v. Gulf Oil Corp, a litigation against thirteen major oil companies, in which we represented more than two hundred thousand lessee-dealers, including the more than forty thousand dealers leasing stations from these oil companies at the conclusion of the lawsuit. This hard-fought litigation lasted for more than thirteen years and only recently concluded with a settlement which secured some very important rights for our clients, some of the same rights which are the focus of the bill now proposed, S.1140.

The need for legislation is threefold. First, the Bogosian Settlement is effective only with respect to members of the classes. Secondly, the provisions terminate at the end of five years. Thirdly, the benefits of the settlement are judicially created and enforced. The proposed bill will take the Bogosian Settlement and render it the law by congressional action applicable to all motor fuel dealers across the land.

Before I discuss the Bogosian settlement, I will briefly describe the nature of the Bogosian lawsuit. We alleged that the oil companies named as defendants, the largest oil companies in this country and certainly some of the largest corporations in the world, had conspired to force their dealers to purchase all of their gasoline from their respective lessors. In other words, we alleged that a dealer of Company "A" was forced to purchase all of his gasoline from that company, a dealer of Company "B" from Company "B" and so on. The net effect of this alleged conspiracy was a restraint upon price competition in the gasoline industry. A dealer of Company "A" was forced to buy gasoline at the prices Company "A" demanded because that dealer could not shop around for products from another source. Any dealer who attempted to purchase products from an alternate source was removed from his station, or at best, his lease was not renewed. It is well known that while these oil companies would not allow their dealers to buy products from alternate sources, they themselves were procuring substantial amounts of their own product from the alternate sources foreclosed to their dealers. Thus, Company E, which did not allow their dealers to purchase from companies A-D, was itself purchasing substantial portions of its own supplies from Companies A-D. As the Court pointed out in its opinion denying summary judgment sought by the defendants (reported in Bogosian v. Gulf Oil Corp., 596 Federal Supplement 62 (1984):

> "...plaintiffs will offer extensive proof that the defendant oil companies themselves regularly exchange large quantities of gasoline, which gasoline is then resold under a different defendant's trademark. Plaintiffs evidently have proof that in certain instances such gasoline is sold to the public by the acquiring defendant without that defendant's additives or meeting its own specifications for gasoline sold under its trademark. If nothing else, such evidence at least raises a possible inference that the defendants either considered or acted as if all gasoline is fungible."

The Bogosian settlements, which were achieved on the eve of trial, addressed these pernicious and anti-competitive practices and put an end to them for the life of the settlement, which is five years. The settlements provide that the defendants will not conspire or collude with respect to the brands of gasoline their lessee-dealers may sell and with respect to the terms and conditions contained in their respective leases and supply agreements. This provision remedied the core allegations of the Bogosian case, and should any of the defendants conspire with another, they would be subject to contempt sanctions from the Court in addition to other sanctions. The settlements went further than this, however; eleven of the settling defendants agreed and expressly recognized that they could not require their respective lessee-dealers, under the terms and provisions of their leases and supply agreements, whether taken together or separately, to purchase all the gasoline sold by the less~~or~~ee-dealer from the lessor-defendant. This right is, of course, unrelated to any claim of conspiracy but rather relates solely to the relationship between the individual oil company and its lessee-dealers. The settlements provide that these defendants can satisfy the "non-exclusivity" provision in one of two ways: by allowing a dealer to debrand his station -- using existing tanks and in some cases, pumps -- to sell a brand of gasoline other than the brand of the lessor, or to permit the dealer to install, at his own expense, separate tanks and pumps or both. The provisions of the relief relating to the installation of additional tanks and pumps provide a real benefit in light of the Petroleum Marketing Practices Act, 15 U.S.C. SS 2801 et seq. which guarantees the dealer a secure tenure at his station. Moreover, it is quite probable that other sellers of gasoline, particularly jobbers, may be willing to invest in tanks and pumps in a lessee-dealer's station as a method of selling gasoline through the dealer.

Finally, the settlement addressed the utilization of "minimum purchase" requirements by the defendants as a device to require exclusive purchases. Before these settlements, certain defendants required that their lessee-dealers purchase specified minimum amounts of gasoline from the lessor. These minimums were often set at such a high level that it was either impossible or economically unfeasible for a lessee-dealer to debrand or install separate tanks and pumps. These settlement agreements abrogate such requirements. Although most agreements require that the lessee-dealer purchase some gasoline from the lessor, the specified quantities cannot be such as to cause debranding or installation of separate tanks and pumps to be impracticable. Otherwise, the agreements would be breached. This is because the settlement agreements expressly state that "the express terms of its [a defendant's] leases and motor fuel sales contracts, whether taken individually or together, do not and shall not require... [the] lessee dealer to purchase his entire requirements of motor fuels from [his lessor]". [emphasis added]. The settling defendants do not agree with this interpretation of the settlement agreements. The proposed bill will settle this issue.

Most of the agreements require that a "representative amount" of the lessor's gasoline be sold at its lessee-dealer's stations; "representative amount" is defined as purchasing and selling the lessor's gasoline so as to continuously offer for sale utilizing the lessor's tanks and pumps, all grades of the lessor's gasoline "in such quantities as are necessary to satisfy customer demand for those grades." Thus, as long as the lessee-dealer has on hand sufficient quantities of all grades of lessor's gasoline to meet his customers' demand for that gasoline, he satisfied the requirements of the agreements. Other than that, there is no minimum requirement.

The net effect of the Bogosian settlements is to provide an opportunity to a lessee-dealer to purchase some gasoline from a source other than his lessor. This opportunity affords the lessee-dealer a leverage on his lessor to sell him gasoline at a more competitive price, something he did not have before the settlements. If the lessor does not respond to that, the lessee-dealer has the opportunity to purchase less gasoline from his lessor and more competitively priced gasoline elsewhere under the specified conditions. Thus, these equitable provisions of the settlement agreements introduce a downward price pressure mechanism which previously did not exist.

I have described the Bogosian litigation and the settlements in this detail because I believe they are crucial to the bill now pending, S. 1140. The thrust of the bill is to eliminate the requirement that dealers purchase all their gasoline from their suppliers. The bill specifically makes it unlawful for a producer or refiner to require, or to conspire with others to require, that a dealer purchase more than 70% of his monthly sales of fuel from them or to prohibit the use or conversion of storage tanks and dispensers, provided that reasonable notice at the point of sale is given to the consumer. These provisions are all consistent with the Bogosian settlement which demonstrated that giving dealers freedom to purchase supplies from other sources is viable and presents a system under which the oil companies can live. The Bogosian settlements are limited to five years duration. This bill, S. 1140, would make the benefits of the Bogosian settlement permanent.

Indeed, Judge Donald W. VanArtsdalen, the eminent Federal Judge who so conscientiously presided over the Bogosian case, noted at the hearing for preliminary approval of the settlements that it was specifically the province of the legislature and not the judiciary to address the problems now addressed by S. 1140. Judge VanArtsdalen stated:

> "It is at least my view of the law that the judiciary is in a particularly poor position to try to restructure major industry in the country, on some economic grounds, and at least as I understand the law, the only thing that we are permitted to do, and are required to do, where there's a violation, is to take such steps as may be necessary to prevent a continuing violation."

I submit that the corrective action should be taken by congress.

Thank you for your continued courtesies.

Senator **Metzenbaum**. I could not agree with you more, and I gather that it is only effective for 5 years because that is the best you could get in the settlement negotiations.

Mr. **Berger**. It was, and I want to say this, that we did put in some very reasonable provisions which I think are fair and adequate and equitable to the oil companies as well as to the motorist.

And I think that as a result of *Bogosian*, we are going to have a situation where a leverage has built in, a mechanism for the first time where the dealers who are covered by the *Bogosian* decree have the opportunity to shop around for additional supplies or supplies from someone other than the major oil companies.

The mere existence of that opportunity, even if not seized upon by the dealer, in my view, will have the effect of promoting competition, and thereby decreasing prices to the public.

Senator **Metzenbaum**. Very briefly, Mr. Berger, what do you think of the argument that the trademark is very important because each company has special additives?

Mr. **Berger**. Not very much. I would like to give you what Judge VanArtsdalen said, and with your permission I would like to quote it, in *Bogosian* v. *Gulf Oil* and other companies at 596 Federal Supplement, page 62, 1984—and it is a direct quote and it says:

> The plaintiffs will offer extensive proof that the defendant oil companies themselves regularly exchange large quantities of gasoline, which gasoline is then resold under a different defendant's trademark.
>
> Plaintiffs evidently have proof that in certain instances such gasoline is sold to the public by the acquiring defendant without that defendant's additives or meeting its own specifications for gasoline sold under its trademark. If nothing else, such evidence at least raises a possible inference that the defendants either considered or acted as if all gasoline is fungible.

Senator **Metzenbaum**. Thank you. I am sort of curious. How does that happen to be in the Federal supplement if the case was settled?

Mr. **Berger**. We had over 200 legal issues which were decided by Judge VanArtsdalen. One of them was on a motion for summary judgment in which the very arguments that were advanced this morning were put forward. And in denying the motion for summary judgment in favor of the defendants, Judge VanArtsdalen wrote an opinion and this is the citation of that opinion which has been published.

Senator **Metzenbaum**. Will you give us the cite on that again?

Mr. **Berger**. Yes, 596 Federal Supplement 62, 1984, sir.

Senator **Metzenbaum**. If you have a copy of that, we are going to include it in the record. If you do not have a copy, we will obtain a copy.

Mr. **Berger**. You will find that quotation on page 2 of my statement which, with your permission, is a part of the record of this hearing. But I will be glad to supply to the committee not only the opinion itself, but also copies of the agreements which we reached with the oil companies.

Senator **Metzenbaum**. Then we will not include the entire matter in the record since it already is in the record as part of your statement. I thank you, sir; I appreciate your testimony very much.

Mr. Umbeck, we would be happy to hear from you, sir.

STATEMENT OF JOHN UMBECK

Dr. UMBECK. Thank you. My name is John Umbeck. I am an economist from Purdue University in West Lafayette, IN. After the Notre Dame game 2 weeks ago, I was proud to say I was from Purdue, but after Minnesota this last weekend, I am just from West Lafayette.

Senator METZENBAUM. I am glad you have strong commitments to your concerns.

Dr. UMBECK. I was invited to speak here today by the committee chairman. My expenses have been paid by Atlantic Richfield Co.

It was my study of Maryland and Maryland divorcement that was cited this morning by the Federal Trade Commission and the Department of Justice. My study has been published in at least three public journals that I know of, including a University of Chicago Journal of Law and Economics.

Since I have already testified before this committee and described in detail my study, I will only briefly summarize it today and look at some of the other evidence that has been promoted this morning.

The study of Maryland that I did began several years ago. We, first of all, isolated and identified all of the divorced stations actually affected by the law in Maryland. From those stations we collected detailed price histories from a period of about 2½ years before divorcement until 2½ years after divorcement at each one of those sites. Those prices were, as I mentioned, collected for before and after the date of divorcement, and that date is important, because not all stations were divorced on the same date. Divorcement itself took place rather gradually over a lengthy period of time.

We also collected prices from stations located in and around each of the divorced stations as a control group so that we could isolate out the effects of inflation, OPEC oil disruptions, local taxes, State taxes, and so on.

The results were very clear-cut. In virtually every case at each divorced station immediately following divorcement, the lessee dealer that went into that station raised prices, lowered hours, and at the neighboring stations prices also went up as a result of the reduced competition from the low-priced, previously company-operated station.

That very simply summarizes my study. The studies that have been offered—one at least this morning was offered by the Service Station Dealers of America that claims that my study is all wrong and that, in fact, Maryland has benefitted from divorcement.

I have been over their report; it is in a paper published by the Service Station Dealers of America, A Price Analysis of Maryland Divorcement. First of all, they look at margins, OK—margins are the difference between the retail price and the apparent dealer wholesale price, as reported by Dan Lundberg, who has been cited several times today.

Dealer margins have absolutely nothing to do with this issue. The issue is prices, not margins. It is a little bit like a doctor who examines somebody's feet and tells them that their eyes are OK because their feet passed the inspection.

If you want to know what happened to prices in the State of Maryland as a result of divorcement, you look at prices, not margins. When they do get around to looking at prices, they look only at prices starting in 1982 and going through 1984. They have absolutely no indication of what the prices were in Maryland before divorcement.

Now, that scientifically means that it is impossible to draw any conclusions whatsoever from that price information. One can only state that in the data they use, their prices are relatively low on the east coast. You cannot conclude that those prices were in any way affected by divorcement.

To continue with the analogy, a couple of weeks ago the State of Maryland was hit by at least the tailend of a hurricane. Suppose today we went into Maryland and we discovered that they had relatively low prices. Without knowing anything about the prices before the hurricane, one would have to conclude that the hurricane caused low prices.

In fact, without knowing anything about prices from the dealer's study in Maryland before divorcement, you can conclude nothing about divorcement or anything else that happened prior to the collection of that data. That data is totally meaningless with respect to the issues that are on hand here today.

[The statement follows:]

TESTIMONY

BY

PROFESSOR JOHN UMBECK

PURDUE UNIVERSITY

Members of the Committee on the Judiciary, my name is John Umbeck. I am an economist from the school of business at Purdue University and I have been studying retail petroleum marketing practices for the last 4 years. While I have been invited by your committee to present my views on Senate Bill S.1140, my expenses today are being paid by the Atlantic Richfield Company.

This bill, apparently motivated by allegations of unfair marketing practices by major oil companies, would prohibit certain refiners from selling gasoline through retail stations using salaried employees. Stations currently operated under this type of contract would have to be closed or leased to a lessee-dealer.

On March 14, 1984, I testified before this committee on a similar bill. At that time I offered scientific evidence, from my research in the states of Maryland and Delaware, on two important points: 1) the alleged unfair practices addressed by this bill do not exist and 2) the bill, designed to remedy these imaginary practices, would lead to higher prices and less service for the consumer. Because this evidence is on record with your committee and has since been published in three different public journals, I see no reason to repeat myself on these issues. For those interested, a summary of my study has been attaced to this statement. A copy of the complete would be made available on request.

I will spend my time today discussing studies which claim to show my research to be wrong. In particular, I will be examining a report by the Service Station Dealers of America. They have claimed that their studies show that divorcement legislation has lowered retail gasoline prices and dealer margins in the state of Maryland resulting in a net benefit to the consumer. I will show here that these alleged studies are so badly flawed that the claims are without any scientific merit.

In any scientific study of cause and effect, there are three necessary steps which must be taken by the researcher. First, we must identify and locate the
entity on which the alleged effects will occur. In the case of Maryland divorcement legislation, the effects would presumably fall on those company operated stations which were forced to divorce and, perhaps, on stations located within their marketing area.

Second, from those locations we must colllect data on the variables which are likely to be affected before and after the divorcement law was implemented. Again, in the case of Maryland divorcement, we would want information on retail pump prices before and after divorcement at those stations immediately affected. Without before and after prices it is impossible to determine the effects of divorcement !

Third, account must be taken of other possible factors which could have caused the observed effects. In Maryland during the 1970s, one would have to consider the effects of inflation, OPEC supply disruptions, government regulations, differences between stations, such as services, local and state taxes and zoning laws, and so on.

In my own study of Maryland divorcement, we followed each of these steps. By locating each of the stations actually divorced and measuring its prices, before and after its divorcement, relative to its local competition, we were able to isolate and calculate just the effect of the law. As I have already reported, divorcement legislation caused prices to increase in Maryland.

The studies reported by the Service Station Dealers of America failed to follow any of the basic principles of research described above.

First, for their price analysis, the service station dealers used average prices reported by the Lundberg organization for the state of Maryland. Their report does not tell us the number of stations in the sample or, more importantly, the number of stations in the sample which had been divorced, if any. To study stations which were not directly affected by divorcement makes it extremely difficult to measure any of the effects, especially since fewer than 10% of Marylands stations were affected.

To study only those stations not directly affected would be comparable to a doctor who was trying to measure the effects of a new drug and examined only patients who never received any treatment.

Second, the dealers collected data only after divorcement, three to five years after to be exact. Without data from before divorcement it is impossible to measure any of the effects of the law! The fact that the dealers report that Maryland has relatively low retail prices after divorcement is totally irrelevant to the issues at hand. Maryland could have the lowest gasoline prices in the country and that would tell us nothing about the effects of divorcement.

To continue my analogy to the doctor, what if the researcher examined patients who had been given a drug only after the drug had been administered. Without knowing the condition of the patients before, it would be impossible to measure the drug's effects.

The dealers analysis of margins is the most puzzeling. Somehow they manage to conclude that because "apparent" dealer margins are relatively low in Maryland therefore divorcement led to lower retail prices. That would be like a doctor concluding that a new drug did not cause blindness in his patients because he checked their hearts and they were OK. If you want to know what happened to prices after divorcement you should measure prices not margins.

Finally, the dealers analysis does not utilize any control group. They are measuring prices and margins from 1982-1984, three to five years after divorcement began in Maryland, and they are attributing all of their findings to divorcement. They have completely ignored all of the major changes which have occured in the petroleum market such as deregulation, slowdowns in inflation, disintegration of OPEC, changes in self-serve ratios, changes in credit operations, and so on.

The divorcement analysis offered by the dealers is a comedy of errors. It only shows the lengths they must go to in order to prove that divorcement leads to lower prices and margins. But, even if their report were scientifically valid, who could believe that dealers, claiming they are being driven out of their markets by unfair, low priced company operated stations, would vote for a bill which is going to lower prices and reduce their profit margins even further.

Obviously, the dealers know exactly what happened in Maryland: retail prices increased after divorcement exactly as my study documents. That is why they are spending their time and resources trying to get similar laws passed nationally. They will benefit from this type of legislation, consumers will not.

Senator **Metzenbaum**. How do you account for the fact that prices in Baltimore are so low as compared to prices for gasoline nationwide?

Dr. **Umbeck**. I have not tried to account for that at all. That is after divorcement; that is 3 to 5 years after divorcement. We have gone through deregulation, we have gone through a disintegration of OPEC, we have gone through major changes in marketing policy, withdrawal of credit by some refineries, and a radical change in the entire market structure.

Senator **Metzenbaum**. I understand, but my question really is, if divorcement results in higher prices for the consumers—and I think that is the thrust of your study—how do you account for the fact that today Baltimore prices, according to Lundberg Reports, are so much lower than the average nationally?

Now, all these things—you talk about OPEC and you talk about supply and you talk about everything else, but that is true nationally. Why should Baltimore be at the very lowest end of the price range when so many other cities in this country are far, far higher than that?

Dr. **Umbeck**. Well, first of all, without trying to hedge on the question, the question is, I believe, slightly misdirected. The relevant question is would Maryland's prices be even lower if there had not been divorcement, and I can answer that question.

Prices in Maryland are higher after divorcement than they were before. The fact that they are relatively low relative to the other States has absolutely nothing whatsoever to do with divorcement.

Senator **Metzenbaum**. Well, why are they lower? Why is Delaware, a divorcement State—they are priced the lowest; Baltimore, fourth lowest. Why? They do not have oil supplies there. What makes them peculiar?

Dr. **Umbeck**. I have not made that study in current years. All I know is that the stations we targeted for our study, which were the stations actually divorced—on the date they were divorced, their prices went up, and they stayed up relative to other stations through our 1982 review study.

Senator **Metzenbaum**. As I understand it, your estimate of the cost to consumers from divorcement was based on the price increase after divorcement went into effect in Maryland in 1979. Is it not true that at that time the Federal price ceilings on gasoline were in effect?

Dr. **Umbeck**. Well, there are two issues here. There were laws on the books regulating margins, not prices, and those margins were set at a level which, prior to divorcement, were not a binding level; that is, all of the studies indicate that dealers were well below their legal maximum margins until just prior to divorcement.

And then just after divorcement—actually, let us see, spring 1979, just before the divorcement law was mandated, most of the dealers in Maryland were well below their margins. And then with the Iranian oil disruption, there were some shortages; they lasted through the summer of 1979.

And then by the end of the year, those margins, regulated by the Government, were no longer binding constraints. So we tested that to see if that, in fact, was a problem. We dropped those months out of our observation set and we found it changed our results not at all.

Senator **Metzenbaum**. You indicated that you are here testifying and that Atlantic Richfield is paying your expenses, and that is fine. But Mr. Kowal, who was here a little bit ago, testified at a House hearing in 1976, and I quote, "Any study commenced prior to decontrol necessarily is going to produce distorted and tainted results." He is on your team.

Dr. **Umbeck**. Mr. Kowal is not an economist. [Laughter.]

Senator **Metzenbaum**. You my not be appearing for Atlantic Richfield much longer. You realize that? [Laughter.]

Dr. **Umbeck**. Separate from what anybody else says, just purely as an academic, we controlled for the regulations by examining the actual constraints. The actual constraints set a maximum markup that the dealer was legally allowed to have.

Throughout this period, with the exception of the months immediately preceding and following July 1979, those constraints were not binding. The dealers and the company-operated stations both had margins that could have been raised had they wanted to, but competition in the market prohibited those increases.

Senator **Metzenbaum**. Thank you very much, Mr. Umbeck.

Mr. Price, we would be very happy to hear from you, sir.

STATEMENT OF ARTHUR E. PRICE

Mr. **Price**. Thank you, Senator Metzenbaum. We appreciate this opportunity. Comptroller Goldstein's schedule prevented him from being here today and he asked me to thank you for the opportunity to comment on S. 1140.

I will be very brief by summarizing my remarks, with the hope and request that you will include in the record our prepared statement which has already been provided to your staff in detail.

Senator **Metzenbaum**. Each of your statements will be included in the record in their entirety.

Mr. **Price**. Thank you, sir.

Our comments are directed really, then, at only section 3 of the bill which prohibits producer-refiners from company operating retail service stations. Maryland enacted, as you know, similar divorcement legislation in 1974, but due to the legal challenges all the way to the Supreme Court, implementation was not begun until mid-1979.

In March 1981, we testified on H.R. 1362 and Mr. Goldstein cited the beneficial effects upon the consumer during that short two-year period of implementation. He cited lower prices, fewer station closings, a more stable marketplace, and improved service.

In October 1981, we recited to this very same committee, then hearing S. 326, the very same facts and figures presented previously. In response to your questions during that hearing, we provided Senator Thurmond with written evidence of smaller dealer margins in Baltimore than in other east coast cities, fewer station closings, and lower prices in general.

Senator **Metzenbaum**. Is that situation——

Mr. **Price**. One thing I would hasten to add for the committee's consideration is that let us bear in mind, prices were not the total nor sole reason for service station divorcement.

Senator **Metzenbaum**. Is that situation about which you testified concerning lower prices and the other two items you mentioned——

Mr. **Price**. As a general statement, I think so, sir, still today——

Senator **Metzenbaum**. Still today; that is what I wanted to know.

Mr. **Price**. That is correct.

Senator **Metzenbaum**. Thank you.

Mr. **Price**. In March 1984, we once again provided information to this committee, pointing out how Marylanders were continuing to enjoy divorcement; that Maryland's decline in service station population was but one-fourth of the national average.

We called to the committee's attention the fact that National Petroleum News, an industry bible reporting dealer margins, showed that of the 52 cities reported, only three were lower than Baltimore.

I would like to inject here, if I may, that is to dispute a portion of Professor Umbeck's theory, margins are very much a factor. That margin or profit is the only factor over which a retail service station dealer has absolutely any control. The dealer tank wagon price, transportation, and all the other things are determined by a supplying oil company.

We submit to you and the committee, sir, that the additional competition in the marketplace—an instance in the State of Maryland, for example, where BP had operated 82 company-operated stations that now are, in essence, operated by 81 additional actors or competitors, that competition having resulted in lower posted prices all as a result of lower dealer margins—me competing against you on opposite street corners.

There have been numerous attempts to have our legislature repeal service station divorcement, but to no avail. Last year a bill to exempt small refiners was introduced, but it was killed in committee by a 2-to-1 vote. This, we believe, illustrates the complete satisfaction Marylanders have following 5 to 6 years' experience with divorcement. Their preference has been clearly illustrated through their elected legislators' action.

We strongly urge this committee, however, not to exempt small refiners from the bill. Small refiners have big impacts in the areas in which they market. However, should you elect to leave them exempt, we urge you to include appropriate provisions so as not to preempt stricter State statutes such as the one in Maryland.

Senator **Metzenbaum**. Do you feel the language does do that now?

Mr. **Price**. Yes, sir. It preempts or exempts from divorcement at that figure of 175,000 barrels refining capacity per day.

Senator **Metzenbaum**. But my question is do you feel that the way the language is drafted, it preempts State statutes?

Mr. **Price**. It is the opinion of our office. While I am not an attorney, nor has it been run by our counsel, we as laymen believe that it does.

Senator **Metzenbaum**. Well, we will take care of clarifying that because there is no desire from the authors' standpoint to preempt State statutes which cover smaller refiners.

Mr. **Price**. Thank you, Senator; we appreciate that.

One final comment. There are many facts contained in our prepared statement that, in the interests of time, I will not repeat. Divorcement has worked in Maryland to the benefit of the consumer and the dealer. We believe it is saving Maryland citizens $50 million per year, contrary to the claims of industry that are made through studies similar to Professor Umbeck's.

In one statement he made, dealers did not know in their dealer survey what prices were way back or now. We do. In one response before a State legislature—and I do not have those notes with me—gasoline dealer tank wagon price—that is, cost from oil company to dealer—increased, I believe, during that period that the professor cited, 2½ years before divorcement to 2½ years after divorcement, something like 79 cents a gallon.

So as you can see, prices in general certainly did go up, and we submit that they are lower with the additional competition in the marketplace with these dealers vying with each other, and submit to you, sir, that the consumer's lower price is a fall-out benefit to the ills that divorcement was for in the first place.

One final statement. Now is the time, we believe, for proposed service station divorcement—you mentioned it earlier this morning, sir—at a time when the market is shrinking from mergers, market withdrawals and consolidations that result in more and more control of the marketplace by a given few.

We thank you for the opportunity and we will try to answer any questions you may have.

[The statement follows:]

STATEMENT OF ARTHUR E. PRICE, ADMINISTRATOR,
COMPTROLLER OF THE TREASURY, STATE OF MARYLAND,

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM ARTHUR PRICE, ADMINISTRATOR OF THE MOTOR FUEL INSPECTION AND TESTING PROGRAM FOR THE STATE OF MARYLAND. COMPTROLLER LOUIS L. GOLDSTEIN'S SCHEDULE PREVENTED HIM FROM BEING HERE TODAY; HE ASKED ME TO THANK YOU FOR THIS OPPORTUNITY TO ADDRESS S-1140 AND TO SHARE MARYLAND'S EXPERIENCE WITH RETAIL SERVICE STATION DIVORCEMENT.

IN MARCH 1981 COMPTROLLER GOLDSTEIN TESTIFIED BEFORE THE SUBCOMMITTEE ON ENERGY, ENVIRONMENT AND SAFETY ISSUES AFFECTING SMALL BUSINESS ON HR 1362. HE TOLD THE COMMITTEE OF THE COMPLAINTS OF LEASE CANCELLATIONS, DISCREPANCIES IN QUOTAS, ARBITRARY PRICING ZONES ETC. AND HE TOLD THE COMMITTEE HOW OUR STUDY CONCLUDED A CLEAR TREND TOWARD COMPANY OPERATED STATIONS AT THE EXPENSE OF LESSEE DEALERS ALL OF WHICH CULMINATED IN MARYLAND'S ENACTMENT OF A DIVORCEMENT LAW IN 1974. THE LAW WAS CHALLENGED THRU THE COURTS UNTIL THE SUPREME COURT ISSUED ITS MANDATE ON JUNE 14, 1978 UPHOLDING THAT LAW. ONE YEAR WAS ALLOWED FOR THE REFINERS TO GET THEIR HOUSE IN ORDER AND ACTUAL IMPLEMENTATION BEGAN IN JULY 1979, (BUT NOT CONCLUDED UNTIL 1981). MR. GOLDSTEIN CONCLUDED HIS TESTIMONY BY TELLING THE COMMITTEE OF THE BENEFICIAL EFFECTS UPON THE MARYLAND CONSUMER AND DEALER IN THAT SHORT 2 YEAR PERIOD BETWEEN IMPLEMENTATION DATE (JULY 1979) AND HIS TESTIMONY (1981). HE CITED MARYLAND'S MEASURABLE BENEFITS THAT HAD OCCURRED; LOWER PRICES, FEWER STATION CLOSINGS, A MORE STABLE MARKETPLACE, AND IMPROVED SERVICE.

SEVEN MONTHS LATER (OCTOBER 1981) I HAD THE HONOR OF TESTIFYING BEFORE THIS VERY SAME COMMITTEE REGARDING S-326 AND I REPEATED ALL OF THE COMPTROLLERS FACTS AND FIGURES HE HAD PRESENTED PREVIOUSLY. I ALSO RESPONDED TO SENATOR THURMOND'S ENSUING LETTER BY PROVIDING ANSWERS TO HIS QUESTIONS AND THAT RECORD WILL CLEARLY ILLUSTRATE THE BENEFITS TO THE MARYLAND CONSUMER BY SHOWING DEALER MARGINS IN BALTIMORE FAR LESS THAN OTHER EAST COAST CITIES, FEWER SERVICE STATION CLOSINGS AND LOWER PRICES IN GENERAL.

TWO YEARS LATER, IN MARCH 1984, IT WAS ONCE AGAIN MY PRIVELEGE TO PROVIDE FACTS THRU MY TESTIMONY TO THIS VERY SAME COMMITTEE, THEN CONSIDERING S-40. WE POINTED OUT THAT MARYLAND'S DECLINE IN SERVICE STATION POPULATION WAS BUT 1/4 OF THE NATIONAL AVERAGE AND AT THAT TIME CALLED TO YOUR ATTENTION THE 1983 NATIONAL PETROLEUM NEWS FACT BOOK REPORTING DEALER MARGINS FOR 1982 -- IT SHOWS OF THE 52 CITIES REPORTED - ONLY 3 WERE LOWER THAN BALTIMORE.

A LETTER TO SENATOR MATHIAS FROM THE CHIEF, ANTITRUST DIVISION, MARYLAND ATTORNEY GENERAL'S OFFICE CLEARLY STATED THEIR SATISFACTION WITH OUR DIVORCEMENT LAW (COPY ATTACHED).

WE ARE HERE AGAIN, TODAY, TO ENCOURAGE PASSAGE OF SERVICE STATION DIVORCEMENT, PROVIDED FOR IN S-1140. ATTEMPTS HAVE BEEN MADE TO REPEAL OUR DIVORCEMENT LAW IN MARYLAND, BUT TO NO AVAIL. AS RECENT AS OUR LAST GENERAL ASSEMBLY SESSION, A BILL WAS INTRODUCED TO EXEMPT "SMALL REFINERS" BUT IT FAILED IN COMMITTEE. WE BELIEVE THE WILL, DESIRES, AND BENEFITS OF OUR PEOPLE, THEIR SATISFACTION WITH THIS LAW HAS BEEN CLEARLY ILLUSTRATED THRU THEIR ELECTED LEGISLATOR'S ACTION; SIX YEARS OF IMPLEMENTATION AND STILL THERE IS SATISFACTION, INDICATES TO ME, IT IS A GOOD LAW, A LAW THAT PUTS COMPETITION INTO THE MARKETPLACE, IT PUTS JOBS INTO THE MARKETPLACE, IT PUTS STABILITY INTO THE MARKETPLACE AND AT A TIME WHEN THIS IS SO IMPORTANT, A TIME WHEN THE MARKET IS SHRINKING FROM MERGERS AND CONSOLIDATIONS THAT RESULT IN MORE AND MORE CONTROL OF A MARKETPLACE BY A GIVEN FEW.

YOU HAVE EITHER HEARD, OR WILL HEAR TODAY, OF STUDIES PERFORMED FOR THE INDUSTRY AND REFERRED TO AS THE SORENSON REPORT AND THE UMBECK-BARRON STUDY WHEREIN THESE STUDIES PURPORT THAT PRICING WAS THE ISSUE AND EVENTUALLY, UNDER DIVORCEMENT, PRICES ROSE, DETRIMENTAL TO THE CONSUMER. I'D LIKE TO ATTACK THAT LATER ON ITS MERITS, **BUT** FIRST LET ME TELL YOU THESE ARE DIVERSIONS TO DISTRACT YOU FROM THE ISSUES AT HAND.

MARYLAND'S DIVORCEMENT LAW WAS ENACTED BECAUSE OF DISCRIMINATORY PRACTICES (ALLOWANCES TO DEALERS ON ONE SIDE OF THE STREET BUT NOT ON THE OTHER SIDE), WHOLESALE EXPULSION OF DEALERS AND MASSIVE CONVERSIONS FROM FULL SERVICE TO GAS ONLY TYPE OUTLETS AND THEIR CONVERSION TO COMPANY OPERATED RATHER THAN LEASE TO A DEALER; AND CRIES OF UNFAIR ALLOCATION OF PRODUCT IN FAVOR OF COMPANY CONTROLLED OUTLETS. THESE PROBLEMS WERE THE PRECIPITATORS OF DIVORCEMENT LEGISLATION.

MARYLAND NOW HAS, FOR THE MOST PART, 5 YEARS OF DIVORCEMENT EXPERIENCE AND IT HAS ALL BEEN GOOD.

THE UMBECK-BARRON AND THE SORENSON REPORTS ARE GOING TO TELL YOU HOW PRICES WENT UP FOLLOWING DIVORCEMENT AND HOW STATIONS OPERATED FEWER HOURS AND THAT COMPANIES LEFT THE STATE. NONE OF THIS IS TRUE, IN THE WORDS OF ONE OF OUR PEOPLE, IT IS A CLASSIC EXAMPLE OF HOW TO SET UP A STRAWMAN TO BE KNOCKED DOWN, A SMOKESCREEN TO DIVERT ATTENTION FROM THE ISSUES AND ACTUAL FACTS.

HERE ARE THE FACTS SUPPORTED WITH THE EVIDENCE TO PROVE THOSE FACTS. FIRST, IT HAS BROUGHT STABILITY TO THE MARKETPLACE, PROVIDING THE CONSUMER WITH THE QUANTITY AND QUALITY OF LOCATIONS TO SERVE HIM. A SURVEY WE CONDUCTED INDICATES THAT FOR THE 3 YEAR PERIOD, NOVEMBER 1981 TO NOVEMBER 1984, MARYLAND'S SERVICE STATION POPULATION HAS DECLINED A MERE 2% PER YEAR VERSUS THE NATIONAL AVERAGE OF 5% AS REPORTED BY THE 1984 PETROLEUM NEWS FACT BOOK, A NEUTRAL AND INDEPENDENT NATIONALLY RECOGNIZED PUBLICATION. THE QUALITY OF SERVICE IS BETTER BECAUSE WITHOUT THE FEAR OF BEING EJECTED FOR LITTLE OR NO CAUSE, THE DEALER NOW HAS SOME DEGREE OF SECURITY AND CAN INVEST IN BETTER AND MORE MODERN EQUIPMENT WITH WHICH TO SERVE YOUR DAUGHTER AND MINE.

SECOND, NO ONE WITHDREW FROM THE MARYLAND MARKET. THE SAME COMPANIES REPORTING AND PAYING FUEL TAXES TO OUR STATE IN 1973, ARE STILL FILING REPORTS AND PAYING TAXES TO US IN 1985. DIVORCEMENT DOESN'T REDUCE COMPETITION, IT INCREASES IT. EXAMPLE, BP, ONE SINGLE COMPETITOR, WAS COMPANY OPERATING 82 STATIONS -- THOSE 82 STATIONS ARE NOW OPERATED, IN ESSENCE, BY 81 ADDITIONAL ACTORS IN THE MARKETPLACE, THEREBY STIMULATING COMPETITION BETWEEN 82 INDEPENDENT DEALERS. A MAJOR OIL COMPANY VICE PRESIDENT STATED IN 1981 BEFORE A U.S. SENATE SUBCOMMITTEE "RESTRICTING THE NUMBER OF SELLERS OF ANY PRODUCT...TENDS TO INCREASE THE PRICE TO CONSUMERS, NOT TO DECREASE IT". WE AGREE WITH THAT!

THIRD, LET'S TALK ABOUT PRICE. THAT REALLY IS A FALL-OUT BENEFIT TO THE CONSUMER RESULTING FROM THE 82 DIFFERENT DEALERS VYING FOR YOUR CONSTITUENT'S DOLLARS. THE UMBECK-BARRON AND SORENSON REPORTS TELL YOU HOW PRICES INCREASED AT A PORTION OF THE DIVORCED STATIONS FOLLOWING DIVORCEMENT. DEPARTMENT OF ENERGY REGULATIONS EFFECTIVE JULY 15, 1979 (2 DAYS AFTER THE EFFECTIVE DATE OF DIVORCEMENT) LIMITED THE MARGIN OR MARK-UP ON A GALLON TO 10.5 CENTS FOR COMPANY OPERATED

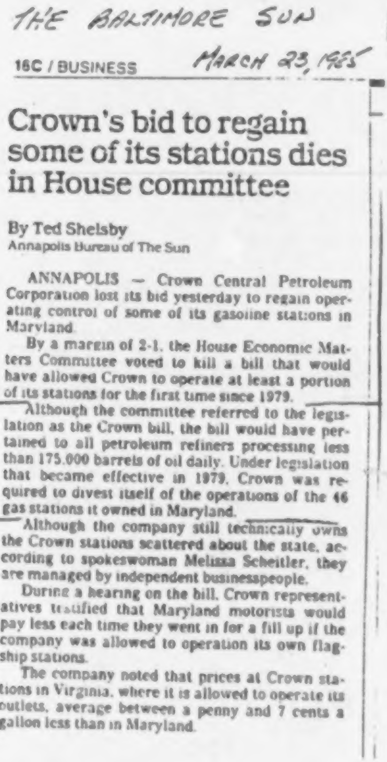
STATIONS AND 15.4 CENTS FOR DEALER OPERATED STATIONS. IT IS NO WONDER THAT AS THE UMBECK-BARRON REPORT STATED "IMMEDIATELY AFTER DIVORCEMENT, PRICES ROSE AT THE DIVORCED STATIONS". THE COMBINATION OF A SHORT SUPPLY AND GAS LINES IN MARYLAND AT THAT TIME, ALONG WITH NEW FEDERAL REGULATIONS, MANDATED THAT RESULT. BUT REMEMBER, HE WAS LOOKING ONLY AT A TINY SPECK WITHIN THE CIRCLE, NOT THE ENTIRE SERVICE STATION UNIVERSE. HOW DOES HE EXPLAIN THE FOLLOWING FACTS:

LET'S LOOK AT DATA PUBLISHED BY THE INDEPENDENT AND NEUTRAL LUNDBURG ORGANIZATION OF RETAIL PRICES AND DEALER MARK-UPS ON REGULAR AND UNLEADED GASOLINE FROM JANUARY 1982 TO DECEMBER 1984. THESE DATES ARE VERY IMPORTANT, AS NO STUDY HAS CONSIDERED THE EFFECTS OF DIVORCEMENT FOLLOWING FULL IMPLEMENTATION OF DIVORCEMENT WHICH FINALLY OCCURRED AT THE END OF NOVEMBER 1981 AND THE END OF FEDERAL PRICE CONTROLS WHICH CEASED AT THE END OF JANUARY 1981. HERE IS DOCUMENTED FACT TAKEN FROM THE LUNDBURG REPORTS:

1. DURING THE PERIOD JANUARY 1982 TO DECEMBER 1984, BALTIMORE DEALER MARGINS ON REGULAR LEADED AND UNLEADED GASOLINE WERE THE LOWEST SURVEYED IN THE NATION. THIS STATISTIC IS CRITICAL BECAUSE THE DEALER HAS NO CONTROL OVER WHOLESALE COSTS, TRANSPORTATION, OR TAXES: HE CONTROLS ONLY HIS MARGIN AND IT IS ONLY HIS MARGIN WHICH IS EFFECTED BY DIVORCEMENT. FOR THIS PERIOD, BALTIMORE DEALER MARK-UP AVERAGED 3.86 VS. THE NATIONAL AVERAGE OF 7.09 CENTS PER GALLON. THIS IS CONTRARY TO THE UMBECK-BARRON CLAIMS OF MARYLAND CONSUMERS PAYING 2 1/2 CENTS PER GALLON MORE -- BY MY ARITHMETIC, OUR CONSUMERS ARE PAYING LESS, AND THIS TRANSLATES INTO A SAVINGS FOR THE MARYLAND MOTORIST OF $65 MILLION ANNUALLY.
2. A SURVEY OF RETAIL PRICES IN 63 CITIES DONE IN JULY, 1984, BY LUNDBURG, AFTER ADJUSTING FOR TAXES: OF THE 4 LOWEST UNLEADED REGULAR, SELF-SERVE PRICES; 3 WERE IN DIVORCEMENT CITIES (WILMINGTON, DELAWARE, WASHINGTON, D.C. AND BALTIMORE, MD).
3. ONE OIL COMPANY HEADQUARTERED IN BALTIMORE CLAIMED PRICES WERE LOWER IN THEIR NORFOLK, VIRGINIA (SISTER CITY TO OURSOUTH) THAN IN BRANDED DEALER RUN OUTLETS

IN BALTIMORE, AGAIN, PUBLICLY PRINTED NUMBERS REFUTE THAT. IN 170 OUT OF 204 CASES, BALTIMORE PRICES WERE LOWER THAN NORFOLK.

LADIES AND GENTLEMEN, WE COULD SELL OR DEFEND, ALL DAY, THE LOGIC FOR SERVICE STATION DIVORCEMENT, BUT TIME DOES NO PERMIT. TO SUMMARIZE THE BENEFITS BRIEFLY; IT HAS PROVIDED THE STATE OF MARYLAND WITH A MORE STABILE SERVICE STATION ENVIRONMENT; IT HAS PROVIDED THE INCENTIVE TO THE SMALL BUSINESSMAN TO INVEST IN HIS BUSINESS; IT HAS PROVEN TO THE WORLD THAT CONSUMERS ENJOY LOWER GAS PRICES; AND IF ALL THIS WASN'T SO, I COULDN'T PROVIDE YOU WITH A CLIPPING FROM THE BALTIMORE SUNPAPERS CLEARLY REFLECTING THE LOVE AFFAIR MEMBERS OF OUR GENERAL ASSEMBLY HAVE WITH DIVORCEMENT.



THE BALTIMORE SUN

16C / BUSINESS MARCH 23, 1985

Crown's bid to regain some of its stations dies in House committee

By Ted Shelsby
Annapolis Bureau of The Sun

ANNAPOLIS — Crown Central Petroleum Corporation lost its bid yesterday to regain operating control of some of its gasoline stations in Maryland.

By a margin of 2-1, the House Economic Matters Committee voted to kill a bill that would have allowed Crown to operate at least a portion of its stations for the first time since 1979.

Although the committee referred to the legislation as the Crown bill, the bill would have pertained to all petroleum refiners processing less than 175,000 barrels of oil daily. Under legislation that became effective in 1979, Crown was required to divest itself of the operations of the 46 gas stations it owned in Maryland.

Although the company still technically owns the Crown stations scattered about the state, according to spokeswoman Melissa Scheitler, they are managed by independent businesspeople.

During a hearing on the bill, Crown representatives testified that Maryland motorists would pay less each time they went in for a fill up if the company was allowed to operation its own flagship stations.

The company noted that prices at Crown stations in Virginia, where it is allowed to operate its outlets, average between a penny and 7 cents a gallon less than in Maryland.

IN CONCLUSION WE RECOMMEND THAT "SMALL REFINERS" NOT BE EXEMPT FROM THIS LEGISLATION, SMALL REFINERS HAVE BIG IMPACTS IN THE AREAS THEY MARKET IN. IF THEY REMAIN EXEMPT IN S-1140, WE URGE YOU TO INCLUDE APPROPRIATE PROVISIONS SO AS NOT TO PREEMPT STRICTER REQUIREMENTS OF SIMILIAR STATE STATUTES.

OFFICES OF

[illegible] SACHS
[illegible] GENERAL

A NILSON
[illegible] GENERAL

[illegible]

THE ATTORNEY GENERAL
ANTITRUST DIVISION
131 EAST REDWOOD STREET
SUITE 701
BALTIMORE, MARYLAND 21202
(301) 659-4222

STATE
OFFIC[illegible]
COMP[illegible]

November 4, 1981

The Honorable Charles McC. Mathias, Jr.
358 Russell Senate Office Building
Washington, D.C. 20510

Re: S. 326
Divorcement Legislation

Dear Senator Mathias:

It has come to my attention that you are under the mistaken impression that it is my view that service station divorcement legislation is unwise or anti-consumer. That is not now and never has been my view. The Maryland Attorney General's Office has consistently taken the position that it is in the public interest to remove the unfair competitive pressures imposed upon the retail gasoline marketer by dual distribution. In addition, I have discussed this very issue with Attorney General Sachs, and he concurs in this view. I hope this letter clarifies our position and resolves any misunderstanding that you may have.

Sincerely,

Charles O. Monk

Charles O. Monk, II
Assistant Attorney General and
Chief, Antitrust Division

COM:ket
0058M

cc: The Honorable Howard Metzenbaum
The Honorable Louis L. Goldstein

TTY FOR DEAF
Balto Area [illegible] 7555

Senator **Metzenbaum**. Thank you very much.

I want to thank all the witnesses. It is 12:29. Those bells are supposed to go off at 12:30. This hearing has been very informative. We appreciate the participation of all of you.

The hearing stands adjourned.

[Whereupon, at 12:29 p.m., the committee was adjourned.]

APPENDIX

ADDITIONAL STATEMENTS AND VIEWS

STATEMENT FOR THE RECORD
OF THE DEPARTMENT OF ENERGY

The Department of Energy appreciates the opportunity to provide its views on S. 1140, the Motor Fuel Sales Competition Improvement Act of 1985. The Department of Energy strongly opposes enactment of S. 1140 because of its adverse consequences for competition, competitors, and consumers.

Summary of Statement

The Department of Energy opposes S. 1140 because divorcement and open supply are contrary to national energy policy. They will result in market inefficiencies interfering with the achievement of adequate supplies of energy at reasonable prices.

The Department opposes divorcement because it is an unwarranted intrusion into the market. The allegations of proponents of divorcement do not support its enactment.

There is no conclusive evidence of predatory subsidization, one of the principal arguments alleged to support divorcement.

- Predatory subsidization is not supported by any empirical evidence.
- Predatory subsidization is inconsistent with a competitive gasoline market.
- Predatory subsidization is an irrational response to a profit maximizing distribution strategy.
- Predatory subsidization is illegal under state minimum markup and below cost sales laws.

There is no conclusive evidence to support artificial pricing, the other principal argument alleged to support divorcement.

- Different channels of distribution produce different price levels.
- Price comparisons obscure pooled margin pricing and supplier incentive programs.
- Rental policies, historically based on low lump sums and volume-linked payments, shifted to higher lump-sum payments exaggerating monthly rent increases.
- Rent levels have increased due to inflation, incentives to increase station volumes, the elimination of government regulation, and the shift in station sales.
- Pricing reflects a market responding to stagnant demand and higher costs of operation.

The Department opposes open supply because it is an unwarranted intrusion into the market.

- Open supply interferes with firms' ability to enter into efficient exclusive dealing arrangements, thus threatening significant market efficiencies.
- Open supply undermines the direct distribution network leading to costly inefficiencies, the potential demise of the dealer network, and higher costs to consumers.

As the Department of Energy concluded in its March 1984 report on the gasoline marketing industry, *Deregulated Gasoline Marketing: Consequences for Competition, Competitors, and Consumers*,

> [T]he vigorous competition occurring in the marketplace since decontrol is caused by underlying structural changes in costs, consumer demand, and consumer preferences. The market changes are not the result of anticompetitive activity, but the result of the competitive process itself forcing adaptation to these underlying structural changes. The many legislative proposals now circulating at . . . the federal . . . level are unwarranted efforts to block or undo the effects of these market forces. At best they are useless. At worst they are expensive counterproductive efforts to deny consumers the benefits of increased competition and efficiency. Ultimately, these legislative proposals hurt the very businessmen they ostensibly are intended to help, while they harm the competitive process, competitors, and consumers.

Summary of S. 1140

The bill, S. 1140, has two principal provisions, one concerning open supply and the other concerning divorcement. Section 2, regarding open supply, would prohibit a supplier from requiring a dealer to buy more than 70 percent of the dealer's monthly supply of gasoline (and other motor fuels) from the supplier. The effect of section 2(a) would be to make it illegal for suppliers to require exclusive dealing contracts with their dealers for all the gasoline sold through the suppliers' dealer-operated stations. The suppliers could require exclusive dealing contracts only up to 70 percent of sales, leaving the remaining 30 percent up to the dealer to decide how to meet those requirements.

Section 2(c) permits a dealer to use the storage tanks and the gasoline pumps owned by the supplier to sell unbranded gasoline, that is, gasoline supplied by a third party. If the dealer does sell unbranded gasoline, the dealer must post a point-of-sale notice indicating that the gasoline is not supplied by the branded supplier. This section also permits a dealer to use existing dispensing facilities for the sale of unbranded gasoline, or to install dispensing facilities for the sale of unbranded gasoline.

Sections 3 and 4, concerning divorcement, prohibit a large, integrated refiner from operating a service station itself, but does permit the operation through a lessee or open dealer or through a wholesaler. Thus, company operations or company stores, that is, service stations operated by the large, integrated refiners' employees or contractors no longer would be permitted.

The remainder of the bill deals with definitions and enforcement by the Federal Trade Commission or by an affected person.

S. 1140 is Contrary to National Energy Policy

It is the energy policy of this nation to develop adequate supplies of energy in the most efficient and least costly manner. Government intervention in the marketplace is discouraged and is viewed as the last resort in those limited situations where the market has failed in some significant way. In the gasoline marketing industry, the marketplace through the competitive process is the best means to assure adequate supplies of gasoline and other motor fuels in the most efficient and least costly manner. S. 1140 would inject the government unnecessarily into the marketplace, disrupting the competitive process to the detriment of competition, competitors, and consumers.

Divorcement

Divorcement is a remedy in search of a problem. The Department of Energy consistently opposed legislated divorcement at the state and federal levels in the past and continues to oppose the divorcement provision of S. 1140.

In the past, allegations have been made that divorcement is necessary to cure the ill effects of anticompetitive, predatory subsidization. The allegation was made that refiners, using profits from upstream segments of their companies, were selling gasoline through their company operations at prices below cost in order to drive their independent dealers out of business. This argument has no basis in fact. As detailed below, the empirical evidence overwhelmingly is to the contrary.

More recently, the allegations focus on the argument that refiners operating company stores are not selling below cost or engaging in predatory subsidization, but are maintaining the dealer tankwagon (DTW) price, that is, the price paid by lessee dealers, at an artificially high level. As a result, dealers are unable to compete with lower priced gasoline sold at company stores. While there may be differences in gasoline pricing, there is no evidence that DTW prices are artificially high. There is no evidence of any anticompetitive or illegal pricing. Let us examine these two allegations in more detail.

The Allegation of Predatory Subsidization

For years, the proponents of divorcement alleged that predatory subsidization was rampant in the gasoline marketing industry. Generally, predatory subsidization is the practice of using profits from upstream operations to sell gasoline through company owned and operated stations below cost with the specific intention of driving competitors out of business. Once the competitors are gone, the company stations can raise their prices above a competitive level and reap monopoly profits. Specifically, this argument has been relied upon in the gasoline marketing industry as the major cause of the large decrease in the ranks of lessee dealers. The theory has been applied to gasoline marketing by asserting that branded refiners are using predatory subsidization to drive their branded lessee dealers out of business.

The problems with this argument are several:

- There is no empirical support for it.
- It is inconsistent with a competitive marketplace.
- It is an irrational response to a profit maximizing distribution strategy.

The Empirical Evidence Emphatically Provides No Support

The empirical evidence does not support the allegation of predatory subsidization. In 1978, the Congress enacted the Petroleum Marketing Practices Act (PMPA). Part of PMPA, Title III, required the Department of Energy to study predatory subsidization. In January 1981, the Department of Energy issued its so-called Title III report, The State of Competition in Gasoline Marketing. The result of studying massive amounts of data and the conclusion of several years of study were a conclusive finding of no predatory subsidization in the gasoline marketing industry. All allegations of specific instances were investigated thoroughly. No evidence was found to support any of the allegations.

The Department of Energy again studied the gasoline market after it was decontrolled in January 1981. In its report of March 1984, Deregulated Gasoline Marketing, the Department again found not a shred of evidence supporting the claim of predatory subsidization. All allegations of predatory conduct were investigated thoroughly. No empirical support for the allegations was found.

These studies conclusively disprove the long held belief that refiners are using their upstream profits to engage in an illegal, anticompetitive, predatory subsidization campaign to drive their branded, lessee dealer competitors out of business. Because of the conclusiveness of these studies, among others, the principal proponents of this belief have changed their tune. We will examine the new allegations in an ensuing section.

Predatory Subsidization is Inconsistent with a Competitive Market

In order for a campaign of predatory subsidization to succeed, refiners must be in a position to raise prices after competitors are driven from the marketplace. Because of the competitive nature of the gasoline market, refiners never will be in a position to raise prices above competitive levels to recoup their losses. Predatory subsidization, therefore, is inconsistent with a competitive marketplace.

The Department of Energy studies, as well as all other studies of the gasoline marketing industry, show that the retail gasoline industry is highly competitive in general. There are many participants in the market, each with relatively low market share. As a result, no one participant can affect prices without immediate reactions from other participants. In addition, concentration being relatively low, it is relatively easy to enter and leave the market. Any participant that attempts to raise prices above a competitive level will be met with resistance from existing participants as well as the entry (actual or potential) of new participants. Traditional industrial organization economics indicates that when concentration is relatively low and entry and exit conditions are relatively easy, the market is characterized as competitive.

All studies of the gasoline marketing industry show an active branded segment and an intensely active unbranded segment. The historical data show that the major branded segment lost market share to the unbranded independent segment over a substantial period of time. This is a clear indication that the independents are successful in penetrating the industry and maintaining strong, competitive pressure. Innovation primarily comes from the unbranded segment with the branded majors responding to the competitive pressures imposed by the unbranded companies. Because of the existence of a healthy, competitive unbranded segment, any attempt by the branded companies to increase prices above competitive levels will be met by increased entry by the unbranded companies to take advantage of any additional perceived profits. With additional entry, the profits above competitive levels will be competed away and prices will decrease to the competitive level. Thus, attempts by the branded refiners to increase prices will lead to additional competitive pressures that will erode any price increases. Predatory activity in this type of market is impossible.

Not only is competition intense from independents, but it also is intense from other branded refiners. All branded refiners strive for market share, especially when sales are stagnant. Attempts by one branded company to lower prices, drive competitors out, and then raise prices, will be met by price responses from other branded companies. Thus, as prices fall, other companies will respond. But attempts to raise prices above competitive levels will fail as other branded refiners maintain competitive price levels to maintain or increase market share. In the absence of price fixing, a branded refiner would face an impossible situation if it tried to increase prices above competitive levels. It would be met by increased entry from independents and other branded companies. It would be met by price resistance from other branded and unbranded companies as they attempt to increase their market share at the expense of the branded refiner who raised prices above competitive levels. As long as the structure of the market remains competitive, predatory pricing in the absence of widespread price collusion is doomed to failure.

Predatory Subsidization is an Irrational Response to a Profit Maximizing Strategy

Apart from the lack of empirical support for predatory subsidization and its inconsistency with a competitive market, predatory subsidization is an irrational response to a profit maximizing distribution strategy. Gasoline marketers sell gasoline to earn a profit. Any tactic that is contrary to maximizing profits from all distribution networks is irrational. The Department has asked many times why a refiner would intentionally sell below cost through one of its distribution channels knowing full well that the competitive marketplace will never permit the refiner to recoup its losses in the future. The Department never has received a satisfactory response to this question precisely because there is none.

In its most recent study of the gasoline market, the Department found through empirical examination of market share data that the various components of the direct distribution network tend to reinforce each other. Company store and dealer market shares tend to move together while the market shares of indirect sellers (wholesellers or jobbers), move in the opposite direction from the direct network. The implication to be drawn is that the marketing efforts undertaken to promote one part of the direct network redound to the benefit of the entire direct network.

Thus, efforts to help company stores help lessee dealers and other types of dealers. Efforts to help dealers also help company stores. Rather than harming other components of the direct network, refiners attempt to reinforce the other components of the direct network through positive actions. This is persuasive evidence that refiners seek to maximize the sales of the direct channel of distribution through actions that mutually support all components of the direct distribution system. Why any refiner would take adverse actions against one component of its direct network as a tactic to increase the effectiveness of its entire direct network is beyond logic and reason.

Predatory Subsidization and Minimum Markup Laws

One last point must be made about predatory subsidization. Another reason for the proponents' abandonment of the predatory subsidization argument is the widespread existence of minimum markup laws or below cost sales laws. While the Department of Energy strongly opposes these laws because they result in higher prices and are unwarranted government intrusions into the market place, they do exist. In a March 1985 study done for the Department of Energy, Minimum Markup Laws in Gasoline Marketing: An Economic Analysis and a Legal, Economic, and Legislative Review, minimum markup or below cost sales laws were found in twenty-eight states. At least one state enacted a similar law since the study was published.

Minimum markup laws require a retailer to sell his or her product at a prescribed minimum percentage above wholesale cost, guaranteeing a specific margin of profit. Below cost sales laws prohibit a retailer from selling his or her product below his or her wholesale cost. The two laws often exist together. If predatory subsidization is occurring, then the refiners would be violating these state laws. If there is such widespread violation of state law, then why do we find so little state enforcement? There is a fundamental inconsistency with the proponents' argument. They cannot argue to the Congress that divorcement is necessary to stop predatory subsidization when virtually nothing is being done by these same proponents to stop predatory subsidization through the enforcement of state laws. Because of this fundamental inconsistency, as well as the refutations of the predatory subsidization argument made above, the proponents have changed their argument. Let us examine the new argument in more detail.

The Allegation of Artificial Pricing

The new allegations center on refiner DTW pricing and rental practices. The proponents of divorcement allege that refiners are setting DTW prices at artificially high levels preventing dealers from competing with company operations. The principal evidence of this is statements, pictures, and other data showing that retail prices at company stations are lower or just marginally above dealer DTW prices in comparable markets. The other evidence is statements concerning increases in station rents.

On its face, this evidence appears to support the new allegations. But further investigation indicates quite convincingly that the evidence is misleading and often inaccurate. More importantly, the evidence does not show any illegal or anticompetitive activity that needs rectifying. If anything, the evidence supports the findings of many recent studies that the unfettered free market is working most efficiently and producing a wide panoply of consumer choices.

In-Depth Investigation Refutes Allegations of Artificial Pricing

In its recent report on gasoline marketing, the Department of Energy in Deregulated Gasoline Marketing explores recent refiners' pricing and rental practices. Rather than repeat the analysis here, we summarize the findings that are found on pages 33-64 of DOE's report.

First, different distribution strategies require different pricing strategies. A company selling only at wholesale establishes a terminal or rack price. This rack price includes all costs to get the product to the rack. It does not include any costs associated with marketing past the rack. If a company wants to distribute the gasoline directly, then the company must establish prices that reflect the cost of distribution. If the distribution channel is through company stores, that entails one set of costs. If the distribution channel relies on dealers, another set of costs is involved. The intermediate prices of each distribution channel will be different because they reflect different cost elements.

Second, a pure comparison of retail price and invoiced DTW price is meaningless. Retail prices are established based on the buying price and on a pooled margin basis. What this means is that a retailer may decide to use a pricing strategy that prices one gasoline grade quite low to attract customers, while he or she prices other grades high. The margin that results from selling all grades of gasoline will yield a reasonable profit. The profit from the low-priced gasoline may reach only break even. This is the loss leader syndrome, a legitimate marketing technique often used by gasoline retailers.

Another reason why pure price comparisons are meaningless is that they do not reflect rebates, temporary competitive allowances, or other incentive programs offered by the supplier. With the gasoline market so competitive and with the emphasis on building volume, many refiners offer incentive rebates for exceeding historical volume figures. The effective DTW price of the gasoline may be substantially lower once the rebate is factored into the price. In order to obtain an accurate price comparison, the DTW price must be adjusted to reflect the refiners' incentive programs.

Also, with regard to rents, policies have changed substantially over the past several years bringing complaints about what appear to be large increases. While service station rents have increased, the inquiry must delve more deeply to determine whether the rent increases are normal market responses or some form of anticompetitive activity. The inquiries conducted by the Department of Energy and discussed in its March 1984 report at pages 56-64 indicate that rent increases are the result of normal market forces.

There has been a significant change in the way rents are collected. Historically, most refiners charged a small lump sum and based the remainder of the rent on the amount of gasoline sold. Thus, part of the rent was found in the DTW price and part was based on a sliding scale linked to the number of gallons sold at the station each month. In recent years there has been a movement away from these pricing practices and a movement toward larger lump-sum payments. As a result, the size of the rent increases appears quite exaggerated as refiners base their rent on new and different methods. What was a small lump-sum rent years ago now appears as a large lump-sum rent. This apparent increase, however, is moderated by reducing significantly or even eliminating the portion of the rent based on sales volumes.

Moreover, there have been other reasons for rent increases that are discussed in the DOE report, including the passage of the Petroleum Marketing Practices Act (PMPA) requiring uniform rental policies, the need to increase volume at stations, the higher inflation rates, the price and allocation controls, and the shift away from repairs and accessory sales requiring the generation of revenues from sources such as rents, car washes, or convenience stores.

Probably the most important factor restraining rents through the 1970s was government regulation--price and allocation controls. The DOE report at pages 58-60 indicates how the regulations affected rents. Initially, rents were frozen from 1973 through November 1975. After this regulation was overturned by the courts, government regulations again limited the amount refiners could charge for rent. The regulations imposed a limit on the amount of nonproduct cost passthroughs. This meant that dealers could pass through in their retail prices only three cents per gallon of the costs not associated with acquisition or refinement of crude. Rents were included in these nonproduct costs. While refiners were free to raise rents, this passthrough limitation put enormous pressure on refiners not to increase rents because dealers would not be able to pass the costs along to consumers. The three-cent limitation existed until July 1979 when the regulations were changed to permit dealers a fixed margin of 15.4 cents adjusted semiannually for inflation. This regulation permitted rents to increase more rapidly, since dealers could afford to pay the increases out of their fixed margins. In January 1981, the regulations disappeared altogether, thereby subjecting any rent increases to market forces.

With rents being held in check for so long a period of time and during one of the most inflationary periods of history, it is not surprising that rents are increasing. Thus, any comparisons of rent increases must be examined carefully to determine the time frame of the comparison and the market environment.

Government Intervention is Unnecessary since No Problem Requires Correction

The above limited examination of the new allegations also summarizes the more in-depth examination contained in the March 1984 DOE report, and establishes that the arguments do not support government intrusion into the marketplace. The evidence is clear that divorcement will have harmful effects on consumers by increasing prices, limiting service, or both. The Department examined several studies of divorcement and concluded that these studies were serious, creditable portrayals of what would happen if divorcement were implemented. The evidence from Maryland clearly establishes that prices to consumers will increase. The statements of Service Station Dealers of America witnesses testifying on S. 1140 on October 9, 1985, confirm that if company operations did not exist dealers would be able to charge higher prices unimpeded by competition from lower-priced, profitable company stores.

The DOE studies document at length the turbulence the gasoline market has undergone and continues to undergo in the face of declining or stagnant demand and higher costs of operation. Today's industry restructuring is a response to market forces. Legislation that would change the direction of this restructuring or inhibit it would lead to less efficient outcomes and higher prices.

It should be noted that the movement toward company operations as a more efficient way to market gasoline is not limited to large, integrated refiners. If anything, the larger integrated refiners have relied less on company operations than any other segment of the industry. The most recent DOE data indicate that for 1984, the large refiners still rely on dealers and jobbers for 82 percent of their volume sales. Only 15 percent of their volume is sold through company stores. This compares with smaller refiners that sell 21 percent of their volume through company stores and branded jobbers that sell 30 percent of their volume through company stores. The latest data from the Petroleum Marketers Association of America (PMAA) show a decline in sales through dealers and an increase in sales through company stores, a trend that reflects market realities, not anticompetitive conduct. It is worth quoting from the PMAA report, since it so accurately portrays how the market is operating.

> The decrease in dealer ranks is well documented. Traditionally, dealers operated lower volume outlets and augmented motor fuels revenues with car care service and tire, battery and automotive accessory sales. Stores specializing in car care, lubrication, and auto parts have drawn the dealers' customers away and non-petroleum revenues have fallen. The opportunity costs of being a dealer have greatly risen. Since the dealer traditionally relied on nongasoline sales to augment revenues, it is no wonder that many have left the ranks.
>
> Increases in marketer sales through direct operated stations is also to be expected. Marketers are usually on the cutting edge of new marketing techniques. Their stations may be located in better areas and may have larger throughput than their lessee or open dealers. They are large enough to have the capital or to obtain the capital necessary to make changes in their stations or marketing strategies. Competitive pressures are forcing marketers to directly operate fewer, but larger volume outlets. Petroleum Marketers Association of America, 1985 Petroleum Marketing Data Book, pp. 14-15. (Emphasis added)

This statement accurately reflects what is going on in the marketplace. Refiners are responding to competitive pressures from PMAA type marketers as well as from unbranded independents. Competition is so strong in the stagnant gasoline market that innovation and cost reduction are the name of the game. Unfortunately, many traditional dealers are reluctant to change their traditional mode of doing business that relied on low gasoline volumes and high cost, personalized service. The efforts of the traditional dealers to protect their inefficient, high cost mode of operation are reflected in a plethora of protectionist laws at the state and federal level--divorcement, open supply, minimum markup, below cost sales, uniform pricing, and bans on conversions to self-serve. S. 1140 is but another effort to make the gasoline market less competitive, protect the traditional high cost dealer, all in the name of consumer protection. The only problem with this is that the consumer ends up the loser through higher prices and fewer choices.

Restructuring is Not Adversely Affecting Prices

One last piece of evidence is important to complete the picture. Allegations have been made that some of the restructuring through mergers and market withdrawals is leaving some states highly concentrated. The implication is that high concentration in these markets means higher prices. Traditional industrial organization economics supports the implication. But a recent study by the Department of Energy, "A

Short-Term Analysis of the Effects of Concentration on Price in the Gasoline Market," published in the Petroleum Marketing Monthly of April 1985, concludes that wholesale gasoline prices are not higher in states with higher concentration than in states with lower concentration. Furthermore, prices have not gone up more in the more concentrated markets, nor have they gone down less in more concentrated markets. Rather, regional differences (e.g., transportation costs) account for different prices much more so than concentration. While the study was done for only one year and the general conclusion must await further analysis for its long-term implications, the study is clear evidence that recent market changes have not adversely affected gasoline prices.

Divorcement--Conclusion

From all the available evidence, there is no justification for divorcement legislation. There is no empirical evidence to support the allegations of predatory subsidization. Predatory subsidization is inconsistent with a competitive market. Predatory subsidization is irrational from a profit maximization viewpoint. There is no accurate evidence to support the allegations that DTW prices are being held unreasonably high. Rather, the marketplace is working to sort out a more efficient and less costly mix of service station offerings and prices to increase consumers' benefits. Rents, so long restrained by government regulation, are adjusting to market forces and are not being raised as part of a campaign to drive dealers out of business. Divorcement is an unwarranted response to the normal market restructuring. If implemented, it would interfere with the operation of the market to the detriment of the competitive process and consumers.

Open Supply

The Department of Energy opposes the open supply provision of S. 1140 because it is an unwarranted interference in the contractual rights of suppliers and dealers and because it may undermine the direct distribution network and result in less efficient methods of marketing gasoline.

The proponents of open supply argue that permitting lessee dealers to buy gasoline from a supplier other than its traditional, branded supplier would increase competition and lower prices to the consumer. By being able to shop around for gasoline from other sources, the dealer may be able to find lower priced gasoline and pass on the savings to his or her customers. Alternatively, the dealer may be able to increase his or her profits by buying gasoline at a lower price. The argument continues that increasing supply sources may put pressure on the dealer's traditional supplier to lower its price to the dealer with the consequent consumer benefits if the price decrease is passed along. However, because of the costs and inefficiencies that open supply would impose on the distributional system in the long term, dealer costs--and hence consumer prices--will be increased.

Open Supply Interferes with Exclusive Dealing

S. 1140's open supply provision would permit a supplier to require a dealer to buy only up to 70 percent of the dealer's monthly motor fuel requirements. The remaining 30 percent would be discretionary to the dealer, permitting the dealer to contract with the traditional supplier if the dealer wants to do so or permitting the dealer to buy the product elsewhere. Thus, it would be illegal for the supplier to require the dealer to buy the dealer's entire monthly requirements from the supplier.

This provision interferes with the ability of the suppliers and distributors to enter into exclusive contractual arrangements for the sale of gasoline. Exclusive dealing arrangements are not inherently anticompetitive or illegal as indicated in the testimony by the Department of Justice and the Federal Trade Commission. If anything, exclusive dealing may promote efficiency and should be encouraged in those markets where exclusive dealing is beneficial.

According to the Department of Justice and the Supreme Court there are procompetitive benefits "where the market structure of an industry is characterized by numerous buyers and sellers." (DOJ Testimony, p. 14) Exclusivity in unconcentrated markets can promote competition by ensuring stable markets and mutually advantageous business relationships. Since the gasoline marketing industry is competitive, characterized by many buyers and sellers, there may be many procompetitive benefits to be gained by permitting exclusive dealing arrangements.

One of the benefits discussed at page 119 of DOE's report Deregulated Gasoline Marketing, is the increased certainty that a refiner has with respect to its downstream supply arrangements. Assured of a stable downstream requirement, the refiner can schedule its refinery and crude purchasing activities in such a way as to minimize costs and maintain constant schedules. Continuity in operations in an integrated structure can result in lower operating costs and lower prices for gasoline. Increasing downstream supply uncertainty can disrupt crude and refinery activities, as well as lead to higher operating costs, and higher prices for gasoline. Thus, prohibiting exclusive dealing arrangements can have the effect of undermining efficiency and increasing costs for consumers.

Open Supply Undermines Direct Distribution

An equally adverse result is the potential undermining of the direct distribution network. Refiners rely upon a direct distribution network to provide a brand identity for their gasoline and other products. Brand identity is an important component of gasoline marketing, since so many consumers identify with a particular brand of gasoline. Buying a particular brand brings certain benefits such as quality assurance, credit cards, and the intangibles associated with a brand. Open supply could undermine the brand identity to the detriment of the consumer.

A refiner would have less incentive to invest in a dealer network if the refiner could not sell all its products to the dealer. Lessee dealers make little or no investment in a station. The refiner buys or leases the location, builds the facilities, and then leases the station to the dealer. The refiner does this with the expectation that the refiner's investment will be repaid by selling its gasoline at the station. If the refiner has no assurance that the dealer will sell its gasoline at the station, the refiner would be unlikely to make the investment in the first place. The refiner will question the wisdom of using a dealer network if some other alternative will mean more supply security. Forcing refiners to engage in open supply could increase the incentives to operate through company stores because of the certainty that comes by using that distribution network. Open supply by itself therefore could mean fewer lessee dealers.

Furthermore, if open supply were enacted with limited divorcement, then there is a two-fold effect. For those refiners not affected by divorcement, the agreement in the preceding paragraph still applies. For the large, integrated refiners prevented from operating through company stores, their incentive would be to shut down direct distribution altogether and move to marketing indirectly, through jobbers. Since more and more jobbers are marketing directly through their company stores, as the recent PMAA report indicates, dealers would not be the distribution channel of choice by jobbers. Thus, if branded refiners move to indirect marketing, the branded dealer network would suffer because of the reliance on jobbers and the use of jobbers would mean the use of more jobber owned company stores. Again, the dealer would suffer. In any event, with or without divorcement, the dealer would wind up the loser with open supply.

Not only the dealer loses, but the consumer loses also. If the refiner decides that direct distribution is its most efficient method of operation, forcing the refiner to adopt some other method means a less efficient operation, higher operating costs, and higher gasoline prices.

Open Supply--Conclusion

Open supply is not in the best interests of a competitive marketplace. The benefits currently derived from exclusive dealing agreements between suppliers and dealers would be severely limited. The undermining of the direct distribution network would hurt the very dealers that open supply was meant to protect. The inefficiencies introduced into the market would adversely affect competition and consumers.

Conclusion

The Department of Energy is strongly opposed to enactment of S. 1140. The bill is an unwarranted interference in the marketplace. The gasoline market is a competitive industry, characterized by many different types of competitors and relative ease of entry. No one marketer can affect prices without other companies responding instantaneously. Any marketer attempting to raise prices above competitive levels will be met with new entrants who will force prices back to a competitive level. Consequently, prices above competitive levels will be competed away. The ultimate result is that consumers pay the lowest possible price for gasoline and associated products.

This legislation would upset this intensely competitive process. It would intrude where it is not needed and where it is unwanted. It would create inefficiencies, higher prices, and not protect the very class of competitors it was intended to protect. As a result the Department of Energy strongly recommends against the enactment of S. 1140.

STATEMENT OF
Jack W. Houston for the
NATIONAL COALITION OF PETROLEUM RETAILERS

I am Jack W. Houston, Executive Vice President, Georgia Association of Petroleum Retailers. This statement is a Statement of Position of the National Coalition of Petroleum Retailers (NCPR).

NCPR, the National Coalition of Petroleum Retailers, represents four of the country's larger state trade associations whose members are retail gasoline service station operators.

They are: Service Station Dealers Association of Michigan, Inc.; New Jersey Gasoline Retailers Assòciation, Inc.; Texas Service Station Association; and the Georgia Association of Petroleum Retailers, Inc.

Mr. Ferrara of the New Jersey Association will assist in responding to questions.

We thank you for allowing us to update our long standing dedicated effort to gain your favorable support for all gasoline retail dealers from unfair anticompetitive marketing practices in motor fuel sales by refiners of motor fuels.

S.1140 deserves immediate passage. We urge its passage.

Current need for motor fuel sales competition improvements is supported by the fact ... that

> thousands of small business independent
> branded and unbranded retail gasoline
> dealers are struggling against a "Goliath"
> and can not survive the on-rushing slaughter
> that is imminent unless Congress provides

an improvement in the unfair anti-competitive marketing practices of refiners.

Current data provides proof that refiners are engaged in marketing practices that can lead only to the substantial destruction of these small businesses and the valuable rightful place of opportunity they deserve in a "real" free competitive marketplace.

Recent data collected and prepared to expose the shady elements of marketing practices that need to be cleaned-up deal only with Texaco. Others are equally guilty and can be factually sustained from previously submitted testimony before this Committee and other Congressional Committees during the past seven (7) years.

I submit as Exhibit # 1 an analysis of Texaco's marketing practices in the Baton Rouge (Louisiana) area which I prepared earlier this year and ask that it be included in the record of this hearing as a part of our testimony.

> This analysis illustrates how Texaco and other refiners engage in a variety of practices that insures economic eviction of independent branded retail dealers (and indirectly unbranded retail dealers) from the marketplace.
>
> Of particular importance are the facts supplied by Texaco about its integration into the marketing of gasoline in the Baton Rouge area, where now only a handful of dealers remain from a once healthy supply.

For the Georgia (Atlanta area) I am submitting as Exhibit # 2 previously used testimony on Texaco's marketing practices with new data prepared early in 1985 for comparison and understanding of the need for relief. Improvement of motor fuel sales competition is a serious matter. I ask that Exhibit # 2 be included in the record of this hearing as a part of our testimony.

> Here we have (in Exhibit # 2) the nitty-gritty practical diagnosis of the illness (cancer of unfair marketing practices) in simple to understand form:
>
> TEXACO IS EARNING LESS ON SALES
> AT RETAIL THAN IT EARNS AT WHOLESALE
> WHEN SELLING TO ITS RETAIL DEALERS.

Even if one assumes the average sales of 100,000 (in Exhibit # 2) can be increased to 200,000 gallons a month without additional cost to Texaco, only rent or occupancy costs and labor are directly affected. Tax at retail is insignificantly affected. A resulting five cents (05.0¢) a gallon reduction in "Total LAID-IN cost "for Texaco sales at retail does not significantly alter the impossible differentials between what Texaco's wholesale price is to its dealers and the retail price at which Texaco retails the same gasoline. Small business independent retail dealers can not compete against such anticompetitive practices.

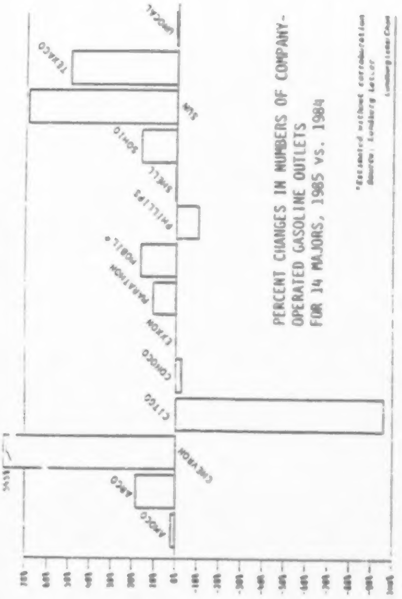
We also support the intent of Section 2. We believe this provision will effectively provide relief from the single and deadly stranglehold of refiners who now even refuse to allow their own products to be purchased from others at lower prices --- see Exhibit # 3 for evidence that Chevron refuses to allow its dealers to buy Chevron product from a Chevron jobber even when a dealer can save and does pass along to his customers as much as 4.0¢ per gallon.

We ask that the terms expressed in Section 5.(3) (B) be amended before passage to either bring all refiners under the Act or to substitute the "one hundred and seventy-five thousand barrels per day" with "fifty thousand barrels per day."

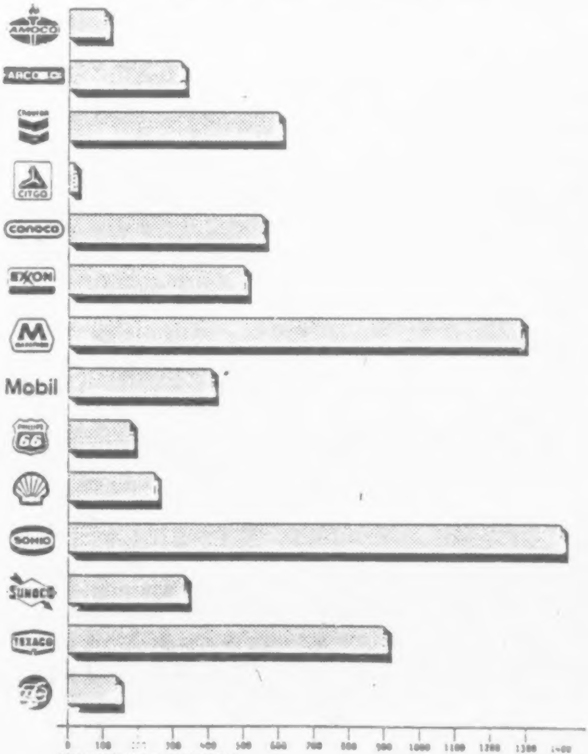
The Lundberg Letter, July 19th, 1985 (below) evidences at a glance that refiner operated retail outlets are no longer "for training dealers or for market testing". They are a threat to the free enterprise system and real competition functioning in gasoline (retail) marketing.

The race is on to substantially eliminate the very existance of independent branded and unbranded retail dealers from the marketplace, using less than fair and reasonable marketing practices to accomplish their goal.

The Congress should not allow it to happen. Enactment of S.1140 will protect motorists from the disaster that surely will occur if five, six, or eight refiners take substantial control of all gasoline - from the well-head to the consumers' gas tanks!



HOW NUMBERS OF COMPANY-OPERATED RETAIL OUTLETS FOR 14 MAJOR OIL COMPANIES COMPARE IN 1985



*Estimated without corroboration
Source: Lundberg Letter

The evidence clearly shows that structural and behavorial practices of some refiners of motor fuels require changes to protect and preserve competition.

An open and free market prevails only when competitiors are able to survive because of their skills, efficiencies and services.

In summary, refiners engaged in retailing are "predators" and they are unnatural and unfair "competitors" because the refiners:

1. Control and fix the wholesale prices paid by their competitors;
2. Control available sources of supply to competitors;
3. Fix occupancy cost of outlets operated by competitors;
4. Require unproductive operating hours costs that competitors must bear;
5. Assess other operating demands that increases their competitor's costs; and

Refiners then fail to recover those same costs when pricing gasoline on retail pumps at their company-operated outlets.

In conclusion, so that the record for S.1140 has the benefit of testimony prepared and submitted in support of earlier legislation introduced to correct unfair competitive marketing practices of refiners, we respectfully ask that Exhibits # 4 through # 10 also be included in the official record of this hearing on S.1140.

Thank you.

Exhibit # 1.	"An Analysis of Texaco's Marketing Practices in The Baton Rouge Area and Their Impact on Herbert Cason" (1985)
Exhibit # 2.	"Hard Evidence" Surveys, 1984 and 1985, of Texaco's Atlanta Co-operated pumper retail stations showing Texaco earning less on sales at retail than Texaco earns on sales at wholesale to its retail dealers.
Exhibit # 3.	Letter 10-30-81 from the law offices of Pillsbury, Madison and Sutro (For Chevron) to Robert S. Jones, Esq. ("... The supply contract requires that they purchase directly from Chevron all Chevron gasoline necessary to serve demand for Chevron gasoline ...".
Exhibit # 4	October 20, 1976 House Report No. 94-1762 (Union Calendar No. 882) "Problems of Small Retail Petroleum

Marketers", findings and recommendations, Chapters IV & V.

Exhibit # 5. ALLVINE/HOUSTON/PHILLIPS 1980 Report entitled "The Case For Legislative Relief From The Impending Destruction Of Small Business And Competition In The Gasoline Industry".

Exhibit # 6. "27 Questions & Answers, S.40 & H.R. 1755 in 98th Congress, S.326 and H.R. 1362 in 97th Congress, Small Business Motor Fuel Marketer Preservation Act".

Exhibit # 7. Hearings (1980) - Serial No. 96-196, H.R. 6722 "Small Business Motor Fuel Marketer Preservation Act",

a) Testimony National Federation of Independent Business, H.R. 6722, 1980 ("... We polled divorcement twice and divestiture once. All three times the membership voted in favor of divestiture or divorcement in the gasoline retail marketing ..."

b) Prepared Statement of Jack W. Houston, Acting Executive Director, on Behalf of Service Station Dealers of America.

Exhibit # 8 Hearings (1981), H.R. 1362 Small Business Motor Fuel Marketer Preservation Act of 1981

a) Prepared Statement of Jack W. Houston, Chairman, Government Affairs Committee, Service Station Dealers of America.

b) Testimony, John J. Flynn, (Utah) (See especially beginning on page 514, "Retail Divorcement")

Exhibit # 9. Hearings Before the Committee On The Judiciary on S.B. 326, July 30 and October 21, 1981 (Serial No. J-97-37) re: Divorcement of Motor Fuel Service Stations -

a) Page 266 through page 278 - "Prepared Statement of Jack W. Houston"

b) Page 257 and 308 through page 316 - "Prepared Statement of Fred C. Allvine"

c) Page 283 through 290 "Appendix B" for Statement of Position SSDA by Jack W. Houston, Chairman, Government Affairs Committee on The Final Report on The State of Competition in Gasoline Marketing ..."

d) Page 291, letter Jerry S. Cohen to Congressman Dingell re: H.R.6722 concerning issues relating to available remedies under the Robinson-Patman Act - Case law reference including that "... transfer from a parent corporation to its wholly-owned subsidary corporation ... cannot be considered sales for Robinson-Patman Act purposes" ..., etc.

e) Page 294 through 304, including "Finding ... Special Survey ... February 1981", Appendix B(2), Charts, etc. showing evidence that refiners reserved 75.4% of self service stations for their own (employee or contract dealer) operations, etc., A comparison of Maryland prices to other states and prepared Statement of Tracy L. Stanton (now President of SSDA).

Exhibit # 10. Hearings Before The Committee on The Judiciary On S.40, March 14, 1984, (Serial No. J-98-99) re: The Small Business Motor Fuel Marketer Preservation Act - pages 21-27, Statement by Jack W. Houston on behalf of The Georgia Association of Petroleum Retailers, Inc., and the Service Station Dealers of America including Hard Evidence, (1984), etc.

EXHIBIT # 1

AN ANALYSIS OF TEXACO'S MARKETING PRACTICES IN THE BATON ROUGE AREA AND THEIR IMPACT ON HERBERT CASON

JACK W. HOUSTON
Executive Vice-President
Georgia Association of Petroleum
  Retailers, Inc.
900 N. Hairston Road, Suite "D"
Stone Mountain, Georgia 30083

I. INTRODUCTION

The following report was prepared at the request of Justin Ourso and Peggy Woodward, counsel for Herbert Cason, for use in Mr. Cason's suit against Texaco, Inc., Civil Action No. 83-936, pending in the Federal District Court for the Middle District of Louisiana. I had previously been supplied with various documents and pleadings in the case, including the complaint, Texaco's responses to interrogatories and requests for production, Mr. Cason's responses to interrogatories and requests for production, a map of the Baton Rouge area depicting the location of Mr. Cason's station and those operated by Texaco, photographs of Mr. Cason's station, pricing charts, and the pre-trial order. My understanding of the facts of the case comes from these documents, conferences with Mr. Cason's counsel, and my knowledge of the industry.

It is the conclusion of this report that Texaco has engaged in a variety of practices that insures an economic eviction of Mr. Cason from his station.

II. TEXACO'S GASOLINE MARKETING IN THE CONTEXT OF THE PETROLEUM INDUSTRY

The petroleum industry is divided into four segments, including production, transportation, refining, and marketing. Texaco and other large companies are dominant in the field of production because they control the majority of the reserves of crude oil and because they can afford the enormous costs of discovery and production of crude oil. The major companies also control most of the pipeline systems through which crude oil is transported, and the lion's share of the nation's refining capacity. However, the last stage of the petroleum industry, marketing, was until recently the stronghold of independent marketers.

Up until the petroleum product shortages of 1973 the gasoline industry was highly competitive, with hundreds of thousands of independent dealers offering different levels of services and prices designed to meet the needs of the driving public. However, since the beginning of the shortages that reduced competition and since the advent of technology that permitted the operation of stations without dealers, refiners like Texaco have rapidly integrated downward in select markets to sell the same brand name product directly to comsumers that had previously been sold by branded dealers. Texaco eliminated a large number of its dealers in those select markets where it sells direct to consumers in three clearly visible ways: By replacing and/or renovating existing long-time dealer operated stations with pumper-food stores; by building new pumper-food stores in the same marketing area served by their dealers; and by pricing its gasoline for retail sale near the wholesale price a dealer pays Texaco. Using price and the new attractive stations to influence consumers Texaco has sold high volumes through its direct outlets, so that the share of gasoline marketed through its direct units has increased more dramatically than the number of units themselves. Texaco has been able to maintain such low prices, and thus facilitate its integration into marketing, by subsidizing its direct outlets from profits gained at other levels of the petroleum industry.

This subsidizing is obvious when refiners like Texaco earn less profit on a gallon of gasoline sold at retail to the consumer than it (Texaco) earns on the sale of a gallon at wholesale to retail dealers in the same marketing area. Such a course can have only one objective and one effect, that of eliminating the independent dealers.

Texaco has no magic formula for efficiency that permits it to undercut the prices at Mr. Cason's station. The lower prices are a tactic to build the volume at the company's direct-operated stations. The additional tactic of holding and sometimes widening price differentials between a dealer station and a direct operated station by charging a wholesale price to the dealers that earn refiners, Texaco included, a larger profit than it earns on direct sales to consumers, destroys the dealers volume of business and enhances the volume sold at the Company's direct-operated stations. Once competition from the dalers is eliminated, Texaco and the other majors will avoid price competition that could erode its retail profits.

III. TEXACO'S MARKETING PRACTICES IN THE BATON ROUGE AREA

A. ESTABLISHMENT OF DIRECT OUTLETS AND ELIMINATION OF DEALERS

Information supplied by Texaco shows that attrition among its dealers in Louisiana follows the national trend. Since 1978 a substantial number of stations operated by independent Texaco dealers in Louisiana have been shut down or converted to outlets operated directly by the company. Of the forty-one direct operated stations listed by Texaco, twenty-four were previously operated by dealers. Twenty-one other dealer locations have simply been shut down since 1978 and many others have closed in the past year. Texaco's integration into the marketing of gasoline is most marked in the Baton Rouge area, where only a handful of dealers remain from a once healthy supply, and where twenty direct-operated stations have opened in recent years. It goes without saying that such shifts do not occur without the company's intending to substitute its own marketing outlets for those operated by independent dealers.

Texaco's preference for its direct-operated stations is demonstrated not only by the numbers but by the investment Texaco has made in them as compared with its investment in dealer-operated outlets. Since 1978 there have been no new facilities constructed for dealers in the New Orleans marketing division (encompassing all of South Louisiana). There has been only one station razed and rebuilt as a modernized System 2000 and placed in the hands of a dealer. The remaining twenty-seven System 2000 stations listed by Texaco in the New Orleans marketing division are directly operated by the company. Again, the trend toward modern, direct-operated facilities is most notable in Baton Rouge.

At the same time that Texaco was modernizing its company outlets, it was sadly neglecting Mr. Cason's station, whose deplorable condition is apparent from photographs. Pitted asphalt and old-model signs, for example, can be expected to have as negative an impact on consumers as the bright, modern facilities will have a positive impact. The physical appearance of Mr. Cason's station, as compared to Texaco's direct outlets, is one aspect of the economic eviction Texaco has brought to bear on him.

B. UNFAIR PRICING

With twenty well placed company-operated stations in the Baton Rouge area, Texaco has achieved tremendous market penetration. Pricing at these outlets in Baton Rouge is sure to have a strong impact on Mr. Cason's sales in Port Allen, a satellite community connected to Baton Rouge by an interstate highway.

The mobility of consumers in the immediate Port Allen vicinity and of consumers throughout the greater Baton Rouge area enables these consumers to select from among a large number of Texaco stations with whom they will trade. The common practice of street price signs at Texaco stations influences consumers to favor lower prices at company-operated stations. Texaco can therefore, by earning less on gasoline sold direct to consumers than it earns on the wholesale price charged dealers, control its competitor's (Texaco retail dealers) prices to the detriment of the dealer and to the detriment (in the long-haul) of fair competition for consumers.

Texaco's direct outlets have engaged in predatory pricing as far back as pricing information is available (November, 1981). On Texaco's regular leaded brand of gasoline the direct outlets have without exception priced gasoline within $ .002 of the wholesale cost, and at many outlets below-cost pricing has been the rule rather than the exception since the beginning of 1983. These stations have also engaged in below-cost pricing of regular unleaded gasoline, though with less frequency. After adding to the wholesale cost of gasoline, the average return on investment for property cost recovery (using Cason's Sation cost as a basis) of $ .04 per gallon, a cost Texaco would impose on Cason if he could increase sales to 150,000 gallons a month, without exception Texaco has sold regular leaded and regular unleaded branded gasoline in the direct outlets below costs in competition with Cason.

Going one step further to incorporate all costs controlled by and imposed by Texaco on its retail dealers, as was reported to the United States Senate based upon research on Texaco in the greater Atlanta market, a sizeable below-cost predatory pricing practice can be shown.

The rebate offered dealers, if figured into the direct outlets' wholesale costs, will result in a narrowing of the overall below cost price differentials. But the rebate is a farce when considered in this way. Texaco is guaranteed full application of the benefits of the rebates, and conversely so, most Texaco dealers having to compete against those below cost retail prices can not qualify for the full relief impact of the offered rebate, or if they do qualify, must suffer great loss of precious margin to gain the volume required.

When the rebate is figured into the direct outlets' wholesale costs, a margin of profit may appear or widen. Presumably, the direct outlets with their low prices generally earn some or all of the rebate, but this would only bring their prices above the wholesale cost of product. It would not likely bring them above the cost of product plus operating expenses that Mr. Cason would have to meet. It would also not likely bring above the cost of the product and the actual cost of operating the retail station.

An independent dealer like Mr. Cason could not stay in business pricing his product the way that Texaco does. Texaco can subsidize its losses from below-cost pricing from profits gained at other levels of its operation. Mr. Cason does not have that option. His overhead expenses, plus a reasonable personal income, must be met by gasoline sales, and this can be accomplished only by a mark-up of his wholesale price. The higher he prices his gasoline, however, the more volume he can expect to lose to Texaco's direct operated outlets. To maintain his volume, then, he must cut his prices (and profits).

Texaco's rebate program contributes to the dealer's difficulties rather than alleviating them. By tying the rebate to a dealer's gallonage, Texaco obtains an indirect control over the price the dealer charges for gasoline. Since the rebate is tied to volume, and volume is tied to price, the only way Mr. Cason can earn the rebate is by pricing his gasoline at or near the levels charged by Texaco's direct outlets. Otherwise he will lose customers to the direct outlets and fail to qualify for some or all of the rebate.

Predatory pricing by Texaco is another key aspect of its economic eviction of Mr. Cason.

C. OTHER UNFAIR TRADE PRACTICES

In addition to predatory pricing through company-operated stations, Texaco has engaged in a number of practices that probably had a negative impact on Mr. Cason's sales. The physical appearance of his station has already been mentioned. Texaco's failure to provide Mr. Cason with diesel fuel has undoubtedly held him back, given his proximity to interstate truck traffic and the increase in diesel-fueled automobiles. Moreover, Texaco's failure on occasion to supply Mr. Cason with the products he does carry likely had effects reaching beyond the immediate shortages he suffered.

While the industry was reducing product deliveries to dealers based upon historic purchases under government edited allocation rules (from 1973 to 1981), the refiners bringing on stream the new company-operated stations as Texaco was doing in the Baton Rouge area obtained extremely high volume allocation bases under those same regulations. This advantage for the newer outlets resulted in company-stations having sufficient product to stay open longer hours and to sell two, three or four times the volume of a long-time dealer. Many dealers had to lock their pumps after only several hours of operation each day. Texaco's company-operated outlets enjoyed that advantage to the detriment of its dealers.

These practices by Texaco contributed to Mr. Cason's economic eviction.

IV. THE NEW LEASE PROPOSED BY TEXACO TO MR. CASON

In the summer of 1983 Texaco presented a renewal lease to Mr. Cason containing a new provision authorizing the company to tear down his station and rebuild it as a System 2000. He would have the option of operating the new facility as an independent dealer, but his rent, which was then at a level of $ 2,200 per month would dramatically increase to $ 6,000 per month, nearly triple what he was paying at the time. Unlike the slow pressures Texaco had brought to bear on Mr. Cason in the past, this proposal amounted to a one-step economic eviction. Mr. Cason could not afford to pay $ 6,000 per month and Texaco surely knew that he could not.

From 1970 through 1977 Mr. Cason's rental rates were closely tied to his gallonage, and thus they were tied to his actual profits. When Texaco instituted a flat rental rate in 1978, it imposed greater risks on Mr. Cason because no matter what decreases he suffered in his gallonage and earnings, his rent would remain the same. Indeed, it was in 1978 that Mr. Cason's gallonage began to decline, and Texaco did not offer the rental relief it had in 1970-1972 before it began moving into the local retail market through direct operations of retail outlets. Even when Texaco cut Mr. Cason's gasoline allocations in 1979 and was unable to supply super unleaded gasoline for part of 1980, his rent remained the same.

The switch by Texaco (and the industry) from a per gallon rental structure to a flat-rent was an effective change that provides a way to evict dealers otherwise not permitted under PMPA.

It was a common practice to impose a per gallon rent in addition to realistic investment recovery that is a part of the wholesale price of gasoline charged retail dealers. In fact, dealers who owned and/or controlled station properties were "paid" (and some are paid today) that value for selling the branded products. With rental costs tied to gallons it enabled dealers to more accurately project profits. The new flat rental based on a return on investment is a ploy to protect a handsome return on investment while the refiner such as Texaco redirects sales through company-operated stations using price as the bait to influence consumer change to the reserved-for-company-operated self-serve outlets.

As was in the past and must necessarily be today, there is no way to justify the large investments in land and property development for a gasoline service station unless the value of profits to be earned on the movement of product through the location is to be considered. In most cases, the highest and best use of the land would be some other use if product sales volume expectations were not a consideration.

It is the conclusion of this report that it is essential to treat investment in station and marketing of product by a refiner such as Texaco as a single venture. This theory and conclusion is undergirded by the common practice cited in this report based upon Texaco's marketing practice of not adding return on investment costs into the retail price of product it sells direct to consumers, thus receiving its investment return on the property in the wholesale price it charges itself. The loss of hundreds of dollars per month could be multiplied into thousands of dollars per month for a dealer paying $ 6,000 in rent. That is the sort of risk an independent, who has no guarantee of gasoline allocations and no subsidy from other operations, cannot afford to take. This is particularly true because Mr. Cason had seen Texaco cutting into his profits more and more each year, so that the prospect of substantially increasing his overhead was unacceptable.

S. 1140

- EXHIBIT # 2 - 2 pages

HARD EVIDENCE SUPPORTS PASSAGE OF THE "MOTOR FUEL SALES COMPETITION IMPROVEMENT ACT OF 1985" Data collected from 13 Texaco pumper retail stations in the Atlanta area where TEXACO IS THE RETAILER OF GASOLINE SHOWS THAT TEXACO IS EARNING LESS ON SALES AT RETAIL THAN TEXACO EARNS ON SALES AT WHOLESALE TO ITS RETAIL DEALERS.

The Data Showed:

	1984 SURVEY			1985 SURVEY		
	regular leaded	regular unleaded	premium unleaded	regular leaded	regular unleaded	premium unleaded
Texaco's Average Retail Price per Gallon	103.23¢	113.27¢	126.05¢	95.4¢	106.8¢	122.8¢
Texaco's Lowest Retail Price per Gallon	99.9¢	110.9¢	121.9¢	91.9¢	99.9¢	111.9¢
Texaco's Highest Retail Price per Gallon	107.9¢	119.9¢	128.9¢	98.9¢	109.9¢	129.9¢
THIS IS THE COST fixed by Texaco: (to dealer operated stations)						
Texaco's Wholesale Price charged dealers	101.55¢	105.55¢	111.55¢	88.9¢	92.9¢	99.9¢
Texaco's Occupancy charge for comparable stations offered to dealers, based on 100,000 gal. mo. sales	5.00	5.00	5.00	5.00	5.00	5.00
Texaco's Credit Card Surcharge on dealers, based on 50% of sales on credit X 3%	2.00	2.00	2.00	2.00	2.00	2.00
Texaco's Hourly Contract rate paid to personnel to operate company-operated stations, based on $7 hr., sales of 100,000 gal. mo.	5.30	5.30	5.30	5.30	5.30	5.30
LAID-IN COST* For Texaco, based on what Texaco charges Texaco retail dealers	113.85	117.85	123.85	101.2	105.2	112.2
Plus 4¢ Tax on Retail Price	4.25	4.41	4.65	3.7	3.9	4.2
TOTAL LAID-IN Cost plus 4¢ Tax	118.10¢	122.26¢	128.50¢	104.9¢	109.1¢	116.4¢

* Does not include insurance, utilities, and other cost to Texaco to operate retail outlets.

TEXACO IS EARNING LESS ON SALES AT RETAIL THAN IT EARNS ON SALES AT WHOLESALE TO ITS RETAIL DEALERS.

TEXACO'S UNFAIR ANTICOMPETITIVE MARKETING PRACTICES ARE "PREDATORY" AND IF ALLOWED TO CONTINUE WILL LESSEN AND DESTROY COMPETITION.

Footnotes to "Hard Evidence"

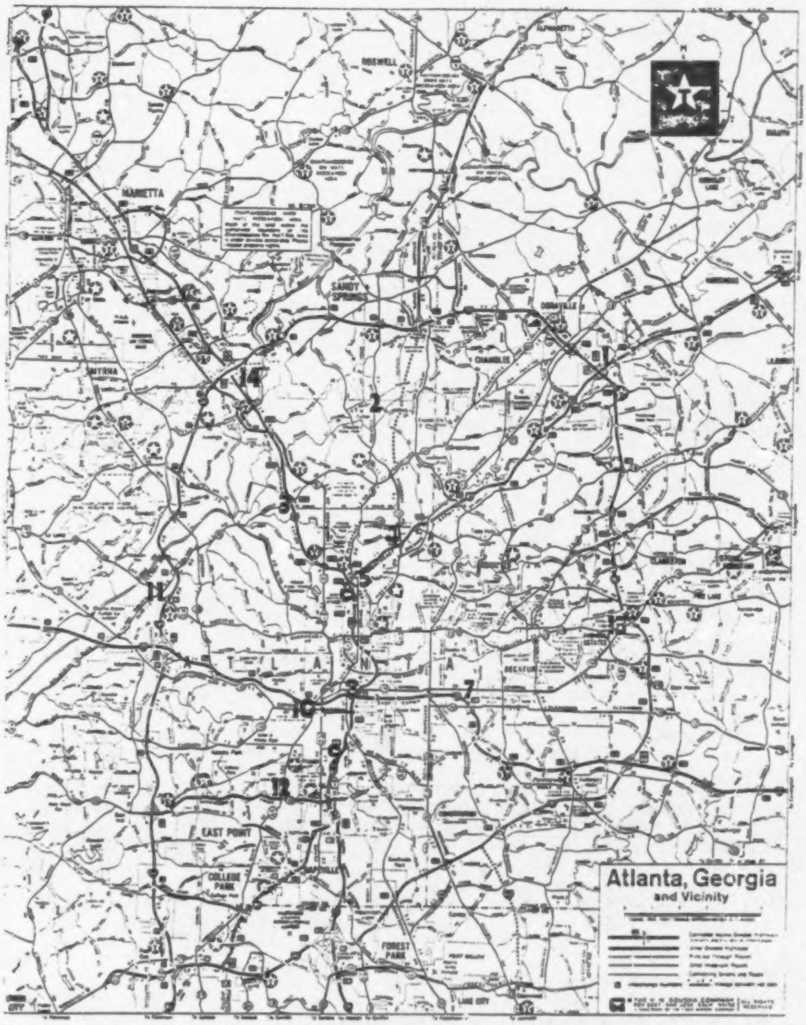
Footnote No. 1 - The data used to support the above information was collected January 3, 1984 by a private contractor hired by GAPR to conduct on-site research at all self-serve Texaco locations shown on the special traffic map of Atlanta and vicinity available at most Texaco stations;

Footnote No. 2 - The best scenario if all dealers qualify for incentive rebates that would reduce wholesale prices place the average reduction to no more than 3¢ a gallon. Consideration of the 3¢ lower wholesale price does not alter significantly the above facts and findings. Some retail dealers do not enjoy the 3¢ reduction.

3.5¢ gal. presumed available in 1985. Wholesale prices above were adjusted.

Footnote No. 3 - The $7 hour used in the example admittedly has been reduced by Texaco for reportedly off-setting values that inure to contract dealers - therefore there would be no change in the per gallon cost as stated in the example.

2-2



KEY ▌ Congested Area Fold flap up at dotted line for recommended alternate routes around congested areas. ✪ Self-Service Texaco Station ✪ Full Service Texaco Station

TEXACO SUPER UNLEADED
KNOCKS OUT THE KNOCKS.

WGST
NewsTalk 92

ATLANTA TRAFFIC MAP

- EXHIBIT # 3 - 2 pages

LAW OFFICES OF
PILLSBURY, MADISON & SUTRO
225 BUSH STREET
POST OFFICE BOX 7880
SAN FRANCISCO, CALIFORNIA 94120
TELEPHONE (415) 983-1000

LONDON OFFICE
105 VICTORIA STREET
LONDON SW1E 6QU
TELEPHONE 01-828-4881

CABLE ADDRESS "EVANS"
TELEX 34743
TELECOPIER: TEL (415) 398-2096

WASHINGTON D.C. OFFICE
1050 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 887-0300

LOS ANGELES OFFICE
700 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 629-9500

WRITER'S DIRECT DIAL NUMBER
983-1043

October 30, 1981

Chevron Dealers - Ray R. Hanson, Richard Berryman and Lamaine Shelnutt

Robert S. Jones, Esq.
Cofer, Beauchamp, Hawes & Brown
Peachtree & Broad Building, Suite 200
Atlanta, GA 90043

Dear Mr. Jones:

This will respond to your letter to Mr. F. L. Jones of our client, Chevron U.S.A. Inc., dated October 9, 1981, and received by him on October 15.

The supply contracts entered into between Chevron and each of the above-noted dealers provide: "Dealer agrees to purchase from Chevron such quantities of the brands of petroleum products (hereinafter sometimes referred to as 'Chevron's products') sold by Chevron generally to service stations in Dealer's locality as are necessary to serve customer demand for Chevron's products at Dealer's premises." Hence, while these dealers may purchase non-Chevron gasoline from others (subject, as discussed below, to the dealer fulfilling his obligations under the supply contract continuously to stock and offer for sale all three grades of Chevron gasolines), the supply contract requires that they purchase directly from Chevron all Chevron gasoline necessary to serve demand for Chevron gasolines at the station covered by the supply contract. As noted in Chevron's September 24, 1981 letters to each of these dealers, any purchase of Chevron gasoline by one of these dealers from a Chevron jobber is therefore a breach of the dealer's supply contract with Chevron.

Each of these dealers leases the stations they operate from Chevron pursuant to dealer leases which provide: "Dealer, as a covenant of this Lease, agrees that the breach

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of or default on any of the terms or conditions of the Supply Contract shall constitute a breach of this Lease, and that the cancellation or termination of the Supply Contract shall automatically cancel or terminate this Lease without further notice to Dealer." Contrary to the assertions in your letter, these provisions are lawful, valid, and enforceable in accordance with their terms.

Chevron's agreements with these dealers do not require them to purchase gasoline or any other product exclusively from Chevron. They may purchase and resell gasoline and other products from a source other than Chevron so long as appropriate steps are taken to protect Chevron's trademarks. Chevron does expect them to fulfill their obligations under their supply contracts with Chevron to purchase from Chevron and continuously to stock and offer for sale such quantities of Chevron gasolines as are necessary to meet the demand for Chevron gasolines at the station. In other words, Chevron will insist that each of these Chevron dealers continuously offer for sale all three grades of Chevron gasolines at the stations they lease from Chevron. As set forth in their dealer leases with Chevron, if any of these dealers wishes to add facilities at the station to dispense non-Chevron gasolines, Chevron has no objection, provided the installation is workmanlike, complies with applicable laws, and does not interfere with the use of existing facilities.

We understand that in response to Chevron's September 24, 1981 letters, these three dealers are again purchasing from Chevron all Chevron gasoline necessary to meet the demand for Chevron gasolines at their stations. Therefore, unless the breach referred to in Chevron's September 24, 1981 letters is repeated, Chevron does not plan to take any further action in this regard. If anyone of these dealers does, however, purchase Chevron gasoline in the future from anyone other than Chevron, Chevron will then have no alternative but to take appropriate further action including termination of the dealer's supply contract and dealer lease with Chevron.

Very truly yours,

Bruce W. McDiarmid
for
Pillsbury, Madison & Sutro

cc: Mr. F. L. Jones

STATEMENT OF
THE STANDARD OIL CO. (OHIO)
REGARDING S. 1140
TO THE SENATE JUDICIARY COMMITTEE

BY
EDWARD P. CAMPBELL
VICE PRESIDENT, RETAIL SALES

This is the statement of The Standard Oil Company (Ohio), submitted by Edward P. Campbell, Vice President Retail Sales for the record concerning S. 1140, entitled "Motor Fuel Sales Competition Improvement Act of 1985."

Essentially, S. 1140 contains the same key provisions as S. 326, S. 2798 and S. 40, on which hearings were held during 1980, 1981 and 1984. The Standard Oil Company (Ohio) submitted testimony for the record at those hearings. This statement reaffirms opposition expressed in the prior testimony and also presents new material in opposition to S. 1140.

As introduced, S. 1140 would prohibit all major refiners from operating retail gasoline outlets with company personnel. The bill, however, would place no restrictions on "small" and "independent" refiners regarding operation of company outlets. Further, it would permit "open supply" with multiple branding at potentially all service stations.

The Standard Oil Company (Ohio) is opposed to S. 1140. It is anti-consumer, special interest legislation designed to remove a legitimate competitive force from the marketplace at a significant cost to the consumer.

Before discussing provisions of the bill, let me review briefly the nature of our operations. With the acquisition of the Gulf marketing and refining properties in eight southeastern states from Chevron this past February, we market through over 8,000 outlets in the eastern United States. In addition, we market nationwide through the Truckstops of America chain acquired from Ryder Trucking in 1984. Of these 8,000 outlets, less than 1,400 (17%) are company-operated, about 1,500 (19%) are dealer-operated and over 5,000 (64%) are supplied by branded jobbers. Over 11,000 employees would be jeopardized if divorcement as proposed were to be enacted.

Since The Standard Oil Company (Ohio) had essentially no operations in the Southeast prior to the acquisition of the Gulf properties, there has been no change in market concentration due to our acquisition. This is worthy of note because of allegations by the Service Station Dealers of America, of high market concentration in certain states due to mergers and predatory company operations. They allege that "in states such as West Virginia, Vermont, Delaware and Ohio, the top four oil companies control over 80% of the gasoline market. In states such as Kentucky, Arizona, Wyoming and Maryland, the dominant oil companies have market shares ranging from 55 to 64 percent." The facts are that based on full-year 1984 state taxable gasoline data published by Lundberg Surveys, Inc. none of these states have a combined market share for the four top marketers of even 60%.

The combined market share of the four leading sellers was for many years the most usual measure of competition. Since the Antitrust Division of the U.S. Department of Justice issued its Merger Guidelines in 1982, it has become customary to measure concentration using the Herfindahl Index, or HHI. The HHI is the sum of squares for the respective market shares of all the sellers. Using Lundberg market share data from 1984, the HHI for our home state of Ohio is about 1150, indicative of rather low concentration on a scale ranging from 0 for infinite competition to 10,000 for a complete monopoly. For the other states cited above, it ranges from 550 to 1100.

Retail divorcement is a concept that gained acceptance in only a handful of states and is now rapidly waning. A few retail divorcement laws were passed in the mid 1970s in response to the shortage of products caused by the initial Arab oil embargo. Dealers at that time felt that they were not getting a fair allocation of product in comparison to the few company operated stations, and therefore sought to have the company operated stations eliminated. The dealers also contended that refiners were engaging in predatory pricing and were subsidizing company operated stations with profit from other operations. A number of studies by federal government agencies showed that these allegations were not true.

The Office of Competition of the U.S. Department of Energy studied competition in the petroleum industry in great depth, as required by Congress, when it passed the Petroleum Marketing Practices Act. Their most recent draft study, Deregulated Gasoline Marketing, published in 1984 concludes that:

> "The vigorous competition occurring in the marketplace since decontrol is caused by underlying structural changes in costs, consumer demand and consumer preferences. The market changes are not the result of anticompetitive activity, but the result of the competitive process itself forcing adaptation to these underlying structural changes. The many legislative proposals now circulating at both the federal and state level are unwarranted efforts to block or undo the effects of these market forces. At best they are useless. At worst they are expensive counter-productive efforts to deny consumers the benefits of increased competition and efficiency. Ultimately, these legislative proposals hurt the very businessmen they ostensibly are intended to help while they harm the competitive process, competitors and consumers."

Since the initial small flurry of retail divorcement laws, many similar bills have been rejected year-after-year at both the state and national level. The most current action regarding divorcement took place this past May, when both the Florida House of Representatives and the Florida Senate voted unanimously to repeal a Florida retail divorcement law which was to go into effect this year after ten years of litigation.

The provision of S. 1140 that would allow a service station dealer to purchase up to 30 percent of his gasoline from any source is called "Open Supply" in the trade. Open supply as proposed in S. 1140 would cause severe consumer confusion, unfair competition and lead to the demise of branded service station marketing, to the detriment of lessee dealers.

The brand of gasoline is still very important to a large segment of the motoring public. Over the years customers have come to rely on the brand to signify an expected level of product quality, service and other benefits, such as credit card acceptance. This consumer brand loyalty did not develop by chance; it was the result of planned investments in first-class service stations at high traffic locations, refinery units, product development, quality control and significant working capital.

Loyalty toward a brand of gasoline is very similar to the loyalty toward any consumer product, such as Maxwell House coffee or Tide laundry detergent. Customers of these brands have developed an expectation of quality and do not expect any surprises when they open a can of coffee, or a box of detergent. The same is true of those who patronize branded service stations. Although open supply would require the station dispensers to be appropriately marked, motorists would still be attracted to the station by the brand identification on the station building and on the I.D. signs. Having been drawn into the station, the customer would feel deceived by the offering of a product of another brand or no brand at all. His/her confidence in that station and others carrying the same brand would be severely shaken.

Additionally, open supply would produce chaos in assigning responsibility for compliance with Federal and State laws concerning octane levels, lead content and leaking underground tanks. With more than one supplier allowed to deliver product into a service station tank, it will not be possible to determine responsibility for "off-spec" product if actual octane does not meet that posted in accord with federal regulations or if leaded product contaminates unleaded fuel.

Open supply would allow a competitor to take unfair advantage of an established company's trademark/brand loyalty. A competitor could dump product into a station and draw upon the goodwill and investments of the original brand. Overall, the environment created by open supply would make it much less attractive for refiners to make investments in branded service stations. Market competition would decline as more branded competitors withdrew because of this condition.

I must agree with both the Office of Competition of the Department of Energy in its concern about this type of legislation and the Federal Trade Commission in its recent opposition to a North Carolina below-cost selling bill that this legislation would "injure competition and result in higher prices to consumers".

Petroleum regulations were lifted four years ago. Contrary to the dire predictions from many sources that with decontrol gasoline prices would climb to over $2.00 a gallon, the price of gasoline has actually dropped by over 30¢ a gallon, excluding taxes. Legislation such as S. 1140 runs counter to the move to lift government controls from the marketplace and allow the consumer to benefit from competition in a free market.

Statement Of Shell Oil Company

Regarding S. 1140

"Motor Fuel Sales Competition Improvement Act Of 1985"

As one of the largest marketers and dealer supplier of branded motor gasoline in the U.S.A., Shell is well acquainted with all aspects of the two major issues in S. 1140 -- Retail Divorcement and Open Supply. Significant changes have occurred in the petroleum business since 1973. Those changes were magnified in the refining and marketing segment of the industry when almost 30 years of continuous growth in the demand for oil products came to an end. Initially, the full impact of these changes was effectively camouflaged by eight years of federal price and allocation controls on petroleum.

Some of the testimony at the Committee hearing on October 9th seemed to imply that service station dealers are the only group which have been affected by these changes, while in fact, every segment of the industry has been impacted. For example, at Shell, since 1973, one refinery has been sold, the sales force and sales support group has been reduced by approximately one-third, and Shell has stopped marketing through over 3,500 stations.

Presently, consumers enjoy a highly competitive retail gasoline market with numerous options for buying gasoline. Gasoline can be purchased on the basis of a national brand, a regional brand, a private brand, or no brand at all. It can be purchased on a full service, mini serve, or self serve basis. It can be purchased on a credit card, for cash, or on a discount for cash basis. It can be purchased at conventional service stations, offering a variety of automotive services; at stations that sell only gasoline; at stations which feature car washes; and at stations which sell food and beverages. These stations can be operated by dealers, jobbers, operators of service station chains or refiners. This diversity creates competition and works to the advantage of the American motorist.

Shell can fully understand why some service station dealers would like to be protected from competition. That desire is "natural" for any business person, whether large or small. For example, many refiner/marketers made more money under the protection of federal control and regulations than they are presently making in a non-controlled market environment. That was because the controls lessened competitive forces. However, the success of the American economy has been built on competition and change. Many of the turbulent changes which occurred since decontrol in the petroleum business - and which some dealers don't like - resulted when the market was freed of regulations which artificially froze the business for almost a decade during the 1970's.

Let's look specifically at the two major issues S. 1140 addresses -- Retail Divorcement and Open Supply -- and some of the charges that were made at the hearing against refiners.

Retail Divorcement

Shell is one of the nation's three largest gasoline marketers. The overwhelming majority of Shell gasoline is sold through branded dealers and jobbers. In the Shell network there are currently 4,580 direct stations, 272 salary stations and 6,214 jobber stations. Although salary operated stations represent a small percentage of Shell service stations, they are an important marketing tool for Shell. They make a significant contribution to our success in attracting customers to the Shell brand. More Shell customers help all Shell stations, whether salary, dealer or jobber operated. Refiner operated stations have a legitimate place in gasoline retailing.

During the Committee hearings the charge was made that unfair competitive pricing practices at refiner operated salary stations were a significant factor in the decline, since 1973, of the number of dealer operated stations. Shell views that charge with skepticism and believes the exhibits presented at the hearing need to be examined very carefully.

Photographs of salary station price signs displaying a retail price at or near the dealer buying price do not necessarily represent unfair competition.

Shell believes that in many areas of the country, over the past several years, retailers of all types (dealers, jobbers, etc.) have sold one or more grades of motor fuel at or near cost as a result of competitive conditions in the marketplace. When this approach is followed, then one or two of the other grades of fuel would have a markup sufficient to offset the reduced price on the lower priced product. This has resulted in retailers looking at their average profit for all three grades of fuel versus looking solely at their profit on each grade in isolation. Therefore, a retailer of any type could be selling a grade of fuel at or near dealer cost and still have a margin large enough to cover expenses and generate a profit. Shell has no intention of "subsidizing" salary station operations or of operating salary stations at a loss. If Shell determines it can't profitably operate a station, Shell will not continue operating it as a salary station for any extended period of time.

Open Supply

Section 2 of S. 1140 which is titled "Wholesale Purchase of Gasoline" as currently drafted, would lead to increased motorist confusion and dissatisfaction in the retail purchase of gasoline. Adoption would also make it more difficult for local, state, and federal agencies to enforce consumer protection, health and environmental standards for gasoline. If Section 2 became law, in Shell's opinion, it would lead to increased adulteration and commingling of product in most of the major metropolitan areas where refiner-dealer leased stations are located. The publicity earlier this year regarding similar types of problems in the New York metropolitan area would be an example of what could be anticipated in many other such markets around the country.

If mixing of gasoline from various manufacturers in one storage tank became widespread, suppliers could not control the quality of their product. There would be very little reason for a refiner to advertise or promote the brand. The incentive for maintaining an invested service station network would diminish. While some dealers might prosper in such a situation, others wouldn't. Especially hard hit would be dealers such as minorities, women and younger dealers who historically have less money to invest in a small business. Many dealers cannot afford to purchase the stations they lease. Some of these dealers would not be able to continue as independent small business people.

The argument was put forth at the Committee hearing that dealers should have the opportunity to purchase a lower priced off-brand alternative gasoline to the gasoline offered by their branded supplier. It was stated this would help both dealers and consumers by giving the consumer an opportunity to purchase a lower priced product plus it would drive down the price of the branded product to the same level as the unbranded product.

This argument seems to ignore the fact that consumers already have the opportunity to purchase unbranded product in essentially every gasoline market in the U.S.A. Shell believes the typical person purchasing gasoline in a branded gasoline retail outlet is doing so by choice. They are willing to pay for a branded product. The things associated with manufacturing and marketing a branded product have an economic cost. While competition may drive the price of a branded product down to the price of unbranded product during a brief period, over a longer term the cost of the branded product either has to be recovered through a higher price or the brand be eliminated. To believe otherwise is highly unrealistic.

Shell Oil Company, as a policy, does not prohibit the purchase and sale of gasoline from other suppliers as long as such sales are done in a manner so as not to confuse or deceive the public in violation of Shell's trademark rights. As stated earlier, the typical motorist comes into a Shell station to purchase Shell branded gasolines, not brand X. Accordingly, Shell believes it is reasonable to require Shell dealers to maintain representative amounts of all three grades of gasoline Shell currently advertises and sells.

The recent court approved settlements in the Bogosian case, which deal with this issue, recognize the dealer's right to purchase product from more than one refiner or other suppliers. However, those settlements contain provisions which provide a balance of the dealer's rights with the rights of the consumers and refiners. These provisions are absent in Section 2 of S. 1140.

Conclusion

Shell opposes S. 1140 because we see no evidence that it is needed and the retail divorcement provisions of the bill are essentially anti-competitive and anti-consumer. A statement was made at the Committee hearing which indicated S. 1140 "would eliminate the incentive for refiners to destroy their dealers". As stated earlier, Shell relies heavily on its outstanding dealer network to sell the majority of its Shell gasolines. The economic well-being and viability of those customers is essential to Shell's marketing success. Shell has no plans to destroy its station network which is effectively being run by dealers and jobbers in order to operate most of these stations on a salary-operated basis as was implied at the Committee hearing on October 9, 1985.

If, on the other hand, S. 1140 were to become law, the Shell brand, which has helped make many of our dealers very successful, would be weakened and the incentive for maintaining an invested dealer network would be lessened. This in turn would result in fewer business opportunities for Shell dealers.

In a competitive marketplace, business successes and failures are inevitable, and the losers will always be looking for protective special interest legislation. However, the basic principle of anti-trust law which contemplates the protection of competition, not individual competitors, must be adhered to if consumer interests are to be served. The decline in the number of dealer operated stations reflects the decline in the total number of stations which has been occurring in the market shakeout since demand for gasoline peaked several years ago. It does not reflect any massive movement by Shell or other refiners into salary operation.

The consumer has the right to be protected from deception, mistake, or confusion, but with Section 2 of S. 1140, there would be an increased chance of product adulteration or commingling. In the event of a product quality problem, the consumer would have difficulty identifying the culpable manufacturer. A motorist pulling into a Shell station expects to purchase Shell gasoline, with the product and performance characteristics and consistency associated with the Shell brand. Under the provisions contained in Section 2, that assurance would no longer be possible.

Before acting on S. 1140, the members of the Judiciary Committee should carefully study all of the issues involved and look in detail at the retail gasoline marketplace and the various competitive elements. Although the competition is stiff, the American consumer has never enjoyed more options including choice of prices than are currently available in purchasing gasoline today.

J Donald Annett
Vice President

Texaco USA

1050 17th Street NW
Suite 500
Washington DC 20036

October 22, 1985

The Honorable Strom Thurmond
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Mr. Chairman:

It is requested that the attached written statement be entered into the record of the hearing on S. 1140, the "Motor Fuel Sales Competition Act of 1985".

Texaco believes Congress should resist enacting legislation such as proposed in S. 1140. This legislation, if enacted, would be at the ultimate expense of the consumers who are benefitting from the intense competition that exists in today's gasoline market.

Sincerely yours,

J Donald Annett

JDA:caj
Attachment

Members Senate Judiciary Committee

TEXACO STATEMENT OF POSITION

The retail divorcement and open supply provisions in S.1140 should not be enacted.

The following comments concern S.1140, the "Motor Fuel Sales Competition Improvement Act of 1985." Texaco appreciates this opportunity to present its views on the subject.

Issue: Legislation that would prohibit large, integrated refiners from operating gasoline retail facilities and limit the branded supply of motor fuel is again being advocated by various retailer associations and considered in Congress as S.1140. These legislative concepts, commonly known as "retail divorcement" and "open supply" have been debated by Congress in the past and wisely rejected.

Perceived Solution: Some retailers believe that "retail divorcement" and "open supply" can solve the problems of the retail marketplace by government intervention purportedly guaranteeing healthy and vigorous competition among retailers, distributors and refiners in the petroleum industry.

Proponents of this legislation contend branded retailers are being forced out of business by major refiners who allegedly sell motor fuel to their own direct operated retail facilities at prices below that which they sell to their branded dealers. This allegedly allows the major company to retail the motor fuel at a lower price than the branded retailer.

Advocates of divorcement cite statistics which show that a large number of retail facilities have closed during the past five to ten years. They say that the majority of these closings were caused by the "unfair competition" from the majors' own direct-operated outlets or other unfair pressures exerted by major oil companies.

Reasons for Texaco's Opposition to S.1140: Texaco has been marketing petroleum products since 1902. Texaco's growth since its inception can be credited in large part to its retailers and wholesalers. Texaco opposes S.1140 for the following reasons:

- S.1140 is a special interest attempt to obtain a protective restructuring of the retail petroleum market. It would deny an entire segment of industry the opportunity to operate its business in the most efficient and competitive manner. Consumer interests would be sacrificed to the benefit of the special interest proponents.

- This bill, by prohibiting large, integrated refiners from directly operating retail facilities, inhibits their ability to introduce innovative, beneficial marketing techniques and would, therefore, discourage dealers' entry into new markets.

- Open supply legislation is not necessary. Retailers already have the right to purchase motor fuel from other sources.

- Section 2 of S.1140, which allows the retailer to sell up to 30 percent unbranded motor fuel, could cause innumerable problems for consumers as well as retailers. Consumers would no longer be able to determine, at a glance at trademark signs, what quality products are available. The quality of products could easily fall to the minimum standard as "open supply" removed the incentives that both insure the high quality of branded products and promote research to develop more efficient fuels. Subsection (c) would encourage the use of "bait and switch" deceptive practices that Congress and the FTC have worked for years to eliminate. A retailer could freely contaminate, commingle, and misbrand motor fuel and pass it off to the motorist as product manufactured by a major oil company. The so-called "notice" in 2(c) is nothing more than a codification of "caveat emptor."

- This bill would be detrimental to the consumer. Retail divorcement can help retailers only at the expense of consumers, and then only to the extent that consumers are forced to purchase higher price gasoline from newly-created dealer stations. Passage of S.1140 would, in fact, result in a less competitive market with higher gasoline prices.

- This bill will not solve the perceived problems of the retailers. There is no doubt that the number of all types of gasoline retail facilities, both branded and unbranded, has been significantly reduced over recent years, but proponents of this legislation have confused fundamental changes in petroleum marketing and consumer preference with unfair competition. Thousands of these closed service stations were obsolete facilities built twenty to thirty years ago, and many were located in areas of declining population. Retail outlets that meet the demands of the modern motoring public in today's intensely competitive marketplace are generally successful, whether operated by retailers, wholesalers, or directly by major oil companies. The belief that the public interest would be served by legislation to prevent the major oil companies from competing to attract volumes to their direct-operated facilities is unfounded.

- S.1140 is unnecessary because retailers are already protected from anti-competitive behavior of suppliers by existing federal statutes; namely, the Sherman Act, Clayton Act, Robinson-Patman Act, Federal Trade Commission Act, and the Petroleum Marketing Practices Act.

- History shows that enactment of S.1140 would be ill-advised. A few states have already passed divorcement legislation. An analysis of gasoline prices in the first state to do so, Maryland, shows that when the tax differentials are removed from the retail prices, Maryland's gasoline prices are higher than those in surrounding areas.

Summary: The gasoline market has always, except for brief periods during price and allocation controls, been highly competitive but profitable for those who could adapt to changing conditions. The combination of market forces at work today has placed considerable pressure on the traditional methods of marketing gasoline. It is not the refiner who determines the success or failure of retailers but a combination of consumer preference, decreasing gasoline demand and the competitive ability of retailers to adapt to a changing marketplace.

Attempts to legislate business success through special interest protectionism will be paid for with higher prices by the consumer.

CROWN CENTRAL PETROLEUM CORPORATION

CROWN

PRODUCERS · REFINERS · MARKETERS OF PETROLEUM PRODUCTS AND PETROCHEMICALS

GENERAL OFFICES · ONE NORTH CHARLES · P.O. BOX 1168 · BALTIMORE, MARYLAND 21203

October 31, 1985

The Honorable Strom Thurmond
Chairman, Senate Judiciary Committee
218 Senate Russell Office Building
Constitution Avenue, N.E.
Washington, D.C. 20510

Dear Senator Thurmond:

Thank you for the opportunity to include Crown Central's comments in the hearing record on S. 1140. Crown Central is an independent refiner, with a 100,000 barrel per day refinery in Pasadena, Texas, and with retail operations in the East and Southeast.

I would like to address the small and independent refiner exemption to the federal divorcement bill, S. 1140. Crown Central benefits from this historic small and independent refiner exemption to both House and Senate federal retail divorcement legislation, as we are both a small refiner (less than 175,000 barrels per day of refining capacity), and we have owned crude oil production of less than 30% compared to our domestic refining capacity. In fact, our domestic crude oil production is only about 2,700 barrels per day, or less than 3% of our domestic (and total) refining capacity. (We have only one refinery.)

Crown is convinced that retail divorcement in Maryland has been a disaster for both small and independent refiners and others who do not have the brand recognition or the benefit of millions of credit card holders that the major refiners have. In order to offset the disadvantages stemming from our lack of brand recognition and only a limited number of credit card holders (which reduces sales to tourists and other travelers), small and independent refiners have had to compete by competing on price -- by charging a penny or two less than the better known "major brand" retailers. We have also competed by building large, well-lighted, attractive stations in prime neighborhood locations that are open 24 hours a day.

When a retail gasoline station is "divorced" and must be leased under the law to an independent lessee, Crown loses the ability under the federal anti-trust laws to determine a lessee station's pricing practices. Unfortunately, the result in our experience is often that the retail lessee dealer tends to charge a parity or higher price than his major lessee competition, rather than chargng a penny or two less. By pursuing such a strategy, the dealer may be able to make an excellent living for a while, but as time progresses, the station will lose volume and may even become uneconomic. At that time the dealer will leave, and we have to select a new one. In addition, many customers may have been lost, having decided not to shop at the particular Crown and perhaps at any other Crown stations -- because the customer's perception of Crown as a low-priced marketer has changed.

This thesis -- that divorcement hurts small and independent refiner/marketers -- is confirmed by analysis of Crown's volume over time, which I have attached as Exhibits I and II. As you can see, in 1979, the year that Maryland divorcment became effective in July, Crown had about 7.5% of the Maryland market. By 1984, Crown's market share had declined to about 5.5%. The same story applies to BP, which while technically a large integrated major, rather than a small independent, did not have a large market share in Maryland and was predisposed to company operation.

In addition to the charts depicting Crown's post-divorcement decline in gallonage and market share, I have prepared a bar graph, Exhibit III, depicting the changes in gallonage over time of the principal gasoline marketers in Maryland, grouping the generally smaller refiners tending to be direct marketers compared to the changes in market share of the generally larger major companies who tend to operate primarily through lessee dealers.

As you can see, the combined sales of the preponderantly smaller direct marketers have declined precipitously. Part of this decline is because Ashland sold their stations and Hess sold some of their stations to Amoco after divorcement became effective.

Personally, I sincerely believe that consumers do benefit from the greatest diversity of choice in normal times and certainly in times of Mideast crisis when supplies are disrupted. But the facts show that divorcement in Maryland has tended to result in greater concentration, in market withdrawals, and in higher prices for consumers of about two cents per gallon. This year alone ARCO and BP have announced their withdrawal from the state, and Chevron is actively soliciting the purchase of its Maryland Gulf stations.

Crown has entered into an agreement to purchase the BP stations. We hope this acquisition will give us the critical mass to compete with the larger companies. In addition, in order to remain healthy in the state, we are actively working to repeal the Maryland divorcement law -- in which we believe we were inadvertantly included.

Please do not threaten the survival of our limited presence in other states such as Virginia, the Carolinas, Georgia, Florida and Alabama, by removing the small and independent refiner exemption from S. 1140. A company our size already has difficulty enough in competing with companies hundreds of times our size. Moreover, our presence is clearly a plus for consumers.

Very truly yours,

Edwin P. Mampe, Jr.
Director, Government Affairs

EPMJr/br
Attachments: 3

EXHIBIT I

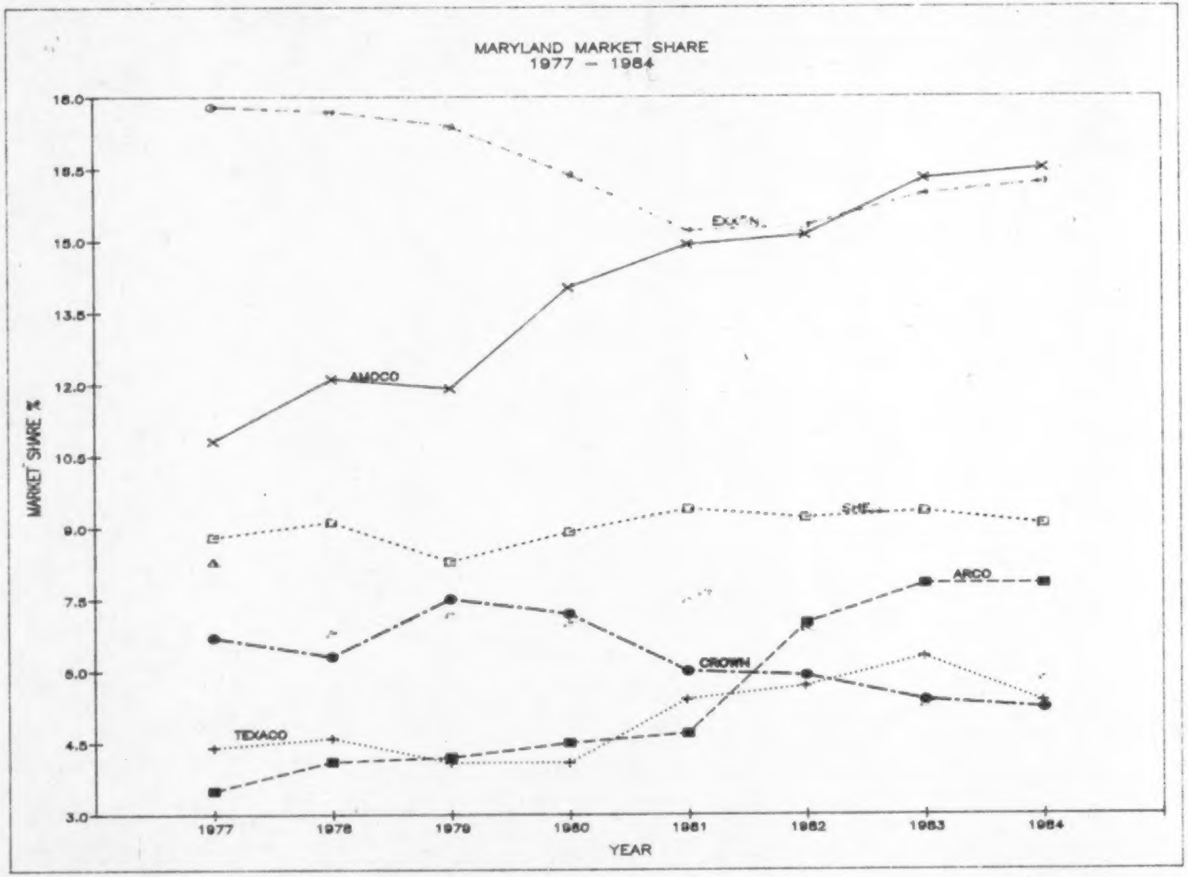

MARYLAND MARKET SHARE
1977 - 1984
MARKET SHARE %
18.0
16.5
15.0
13.5
12.0
10.5
9.0
7.5
6.0
4.5
3.0
YEAR
1977
1978
1979
1980
1981
1982
1983
1984
EXXON
AMOCO
SHELL
ARCO
CROWN
TEXACO

EXHIBIT II

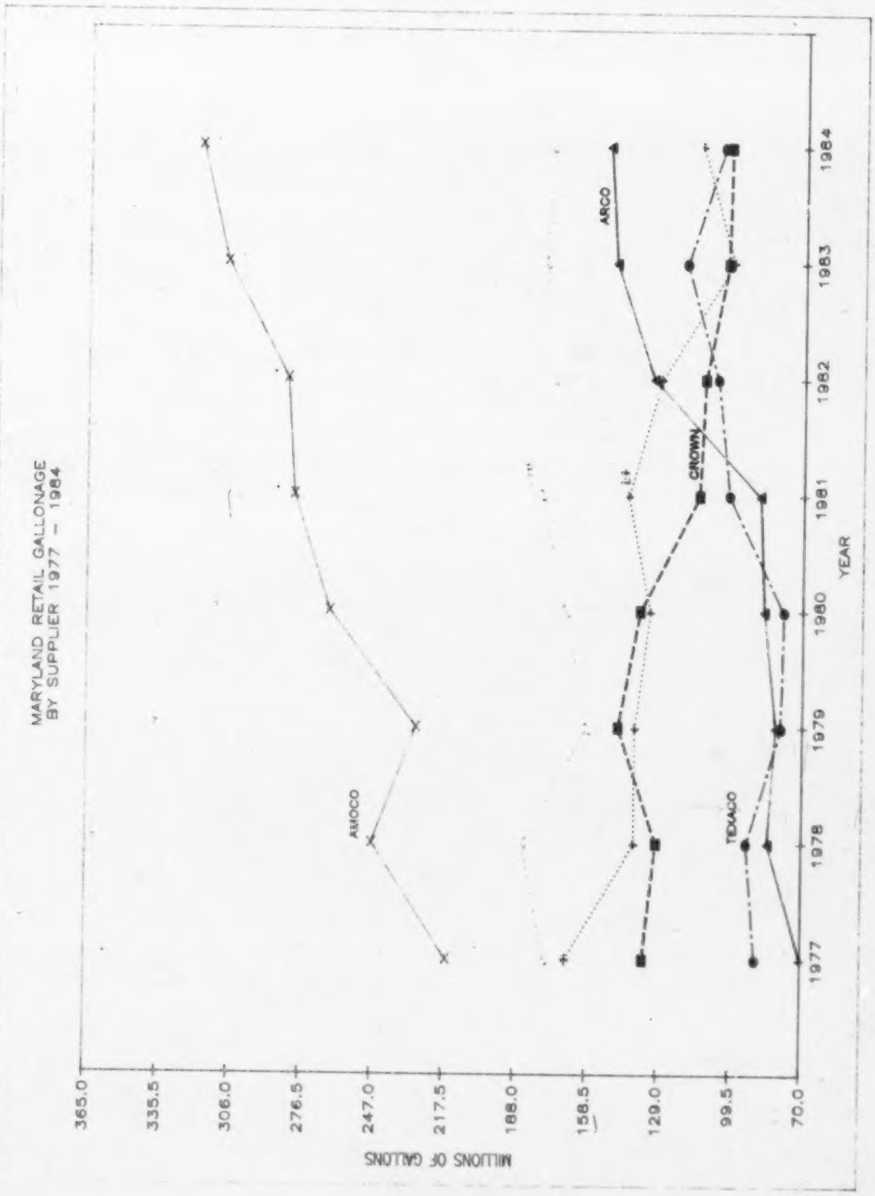
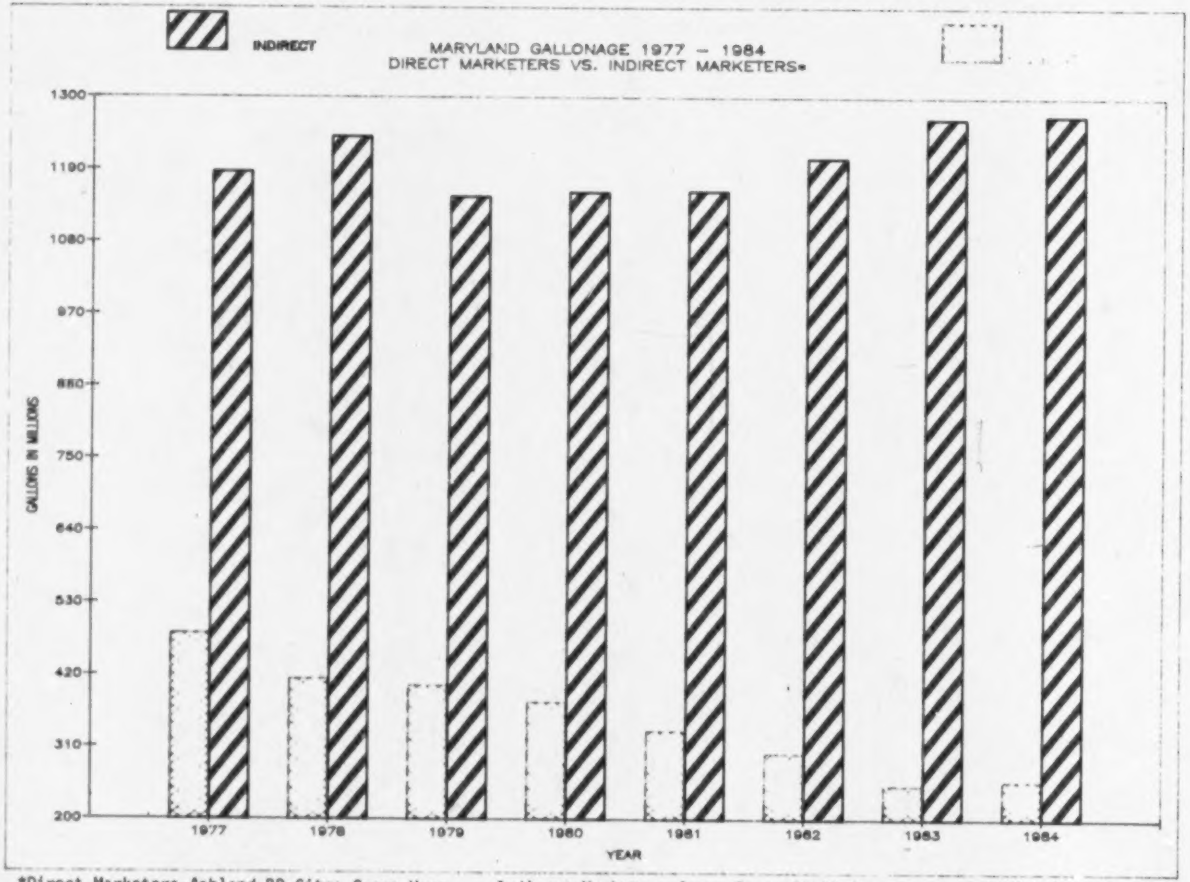

MARYLAND RETAIL GALLONAGE
BY SUPPLIER 1977 - 1984
MILLIONS OF GALLONS
365.0
335.5
306.0
276.5
247.0
217.5
188.0
158.5
129.0
99.5
70.0
YEAR
1977
1978
1979
1980
1981
1982
1983
1984
AMOCO
ARCO
CROWN
TEXACO

EXHIBIT III



*Direct Marketers-Ashland,BP,Citgo,Crown,Hess   Indirect Marketers-Amoco,Exxon,Shell,Arco,Texaco,Gulf,Mobil,Sun

EXXON COMPANY, U.S.A.
POST OFFICE BOX 2180 • HOUSTON, TEXAS 77252-2180

MARKETING DEPARTMENT

R.P. LARKINS
VICE PRESIDENT

October 22, 1985

The Honorable J. Strom Thurmond, Sr.
Chairman, Judiciary Committee
United States Senate
218 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Thurmond:

Attached is Exxon's written submission that we respectfully request be included in the October 9 hearing record on S1140. Also included as part of this statement, is an attachment containing Exxon's response to questions raised on S1140 at the hearing on October 9, 1985.

Exxon believes the petroleum market must be given an opportunity to work, free of additional regulation. The free market provides the greatest assurance that motor fuel will be equitably priced and efficiently distributed to all dealers, jobbers, and consumers. Adequate protections to ensure fair and equitable competition are already in place.

Sincerely,

R. Larkins

RPL:slw
Attachments

STATEMENT OF EXXON COMPANY, U.S.A.
TO THE
JUDICIARY COMMITTEE
OF THE
UNITED STATES SENATE
WASHINGTON, D.C.
CONCERNING S1140
THE MOTOR FUEL SALES COMPETITION IMPROVEMENT ACT OF 1985
OCTOBER 9, 1985

This statement is submitted by Exxon Company, U.S.A. for the hearing record on S1140, The Motor Fuel Sales Competition Improvement Act of 1985. Exxon Company, U.S.A., a marketer of petroleum products primarily through independently operated dealer and distributor businesses, is opposed to S1140 because it would reduce competition in the marketplace and would be harmful to consumer interests.

INTRODUCTION

S1140 is a far-reaching legislative proposal designed to protect certain service station dealers from normal competition at the expense of other petroleum marketers and consumers. If enacted, it would reduce competition in the retailing of motor fuel, decrease the incentive to maintain branded marketing, and provide consumers with fewer choices at higher motor fuel prices.

The proponents of this bill claim that S1140 contains protections necessary for dealers to compete effectively in the marketplace and to stop refiners from forcing them out of business. Objective evaluation of these claims, however, reveals that there are no grounds for such a claim and, even if there were, existing laws provide adequate protection.

The two major provisions of S1140, retail divorcement and open supply, are addressed individually in this statement.

RETAIL DIVORCEMENT

S1140 IS NOT NEEDED

There is ample evidence that retail divorcement legislation is not needed. This conclusion has been reached by the Department of Energy, Federal Trade Commission, and at numerous hearings held at the federal and state level. Even the New York Times in an editorial concluded that "there's no solid evidence" to support the dealers' claims against large integrated refiners. "The available evidence suggests that the main effect of protecting dealers from company-owned outlets is to raise prices and reduce service." The claim that the decline in the number of stations is due to attempts by refiners to take over the retail marketplace has not been supported.

The decline in the number of service stations has been the result of marketplace economics. Inflationary cost pressures, changing demand patterns, and competitive market forces have caused relatively inefficient stations to become uneconomical to suppliers and dealers, resulting in the closing of these stations. These same trends are readily evident in other industries.

The natural attrition of relatively inefficient service stations benefits the consumer and will likely continue. It provides the efficient dealer with greater profitability and a healthier business through higher volumes. The remaining service stations are able to offer more competitive prices and services, directly benefiting the consumer.

Retail divorcement is unnecessary because refiners are not forcing dealers out of business in order to operate stations with company employees. Not only is there no data to support this allegation, but termination or nonrenewal of a dealer's agreement for the purpose of converting the station to a company operated service station is prohibited under the Petroleum Marketing Practices Act (PMPA). Furthermore, the Department of Energy Title III study of refiner operations found no massive movement by refiners into the direct retailing of gasoline.

Earlier this year, in their examination of the state of competition in gasoline marketing in the U.S., both before and after the decontrol of petroleum refining, the Federal Trade Commission (FTC) stated that gasoline franchisees have not been and are not likely to become targets of anticompetitive practices by refiners. The FTC further stated its disagreement with the contention that gasoline marketing divorcement is necessary to protect against alleged refiner abuses.

S1140 IS DISCRIMINATORY

This legislation is discriminatory in that it applies only to large integrated refiners. Small refiners and jobbers are not included in the bill even though they are the major operators of retail service stations with company employees. Although the number of stations operated by large integrated refiners has decreased in recent years, the proponents of this bill want to eliminate their existence altogether. A 1984 Lundberg study indicated that company operated stations of the 16 major oil companies represented only 3.3% of the national service station population.

S1140 IS ANTICOMPETITIVE

S1140 would reduce competition and would not be in the consumer's best interest. In reviewing proposed federal retail divorcement legislation similar to S1140, the Department of Justice concluded that "legislation of this type would be anticompetitive; not procompetitive". The Department of Justice further stated that "the major thrust of the legislation appears to be the protection of the market position of individual petroleum distributors and not the protection of competition. The result of reduced competition typically is to increase prices and provide the consumer with fewer choices".

The Chairman of the U.S. Federal Trade Commission has stated that "the divorcement provision would probably only preserve a less efficient distribution system, shielding it against normal, competitive forces. Retail divorcement legislation would seem to reward and protect the inefficient dealer and maintain his position in the marketplace. Someone would have to pay for these inefficiencies, and the consumer would be the likely bearer of such costs."

Proponents of retail divorcement have claimed that dealer margins declined due to the increased competition, once major suppliers were removed from competing at the retail sales level. However, it seems highly illogical that dealers would be supporting retail divorcement if they actually believed their margins would decrease as a result of it. In fact, just the opposite is true. Studies have shown that competition decreases and prices and margins increase when large integrated refiners are not permitted to operate service stations with company employees.

S1140 IS NOT IN CONSUMER'S BEST INTEREST

The Department of Justice has made several comments on the anticonsumer aspects of retail divorcement. Mr. John Shenefield, then Acting Assistant Attorney General of the Department of Justice, commenting, in August of 1978, on the U.S. Supreme Court decision upholding the Maryland Divorcement statute, stated that:

> "While it is understandable that a state might, out of a sense of equity, seek to protect independent distributors from the competition of larger integrated firms, it is also reasonably clear that over the long run, consumers will pay higher prices as a result. This might explain why in upholding the constitutionality of this statute, the Supreme Court disavowed any endorsement of its economic wisdom."

Retail divorcement would eliminate or reduce some practices of integrated refiners which normally benefit the consumer. First, the consumer would see higher prices. Although determining the impact of retail divorcement on price is difficult, academic studies, such as those made by Purdue University Professors John Barron and John Umbeck, and Florida State University Professor Philip Sorenson, indicate that prices actually increased in Maryland as a result of retail divorcement.

Barron and Umbeck's study has certainly been the most sophisticated and thorough study to date, comparing prices at affected stations in Maryland with immediate competitors over the course of a few years. The conclusions reached in the study indicate prices in Maryland rose 6.7 cents for full service and 1.4 cents for self service after retail divorcement. Also, retail divorcement has led to fewer service stations being available to Maryland motorists and shorter hours of operation at many remaining stations. Based on evidence from their Maryland study, Professor Umbeck concluded that a national retail divorcement bill like S1140 could cost consumers $1 billion a year.

Mr. Richard J. Favretto, while Acting Assistant Attorney General of the Antitrust Division of the Department of Justice, stated before a House Subcommittee Hearing on a bill similar to S1140 that, "If enacted, it would substantially restructure the retail petroleum industry and would lead to higher consumer prices."

Another anticonsumer effect, besides higher retail prices, could be a reduction in the level of service and in the number of consumer choices in the gasoline marketplace. Affected companies would no longer be able to use their company-operated service stations to develop innovative marketing concepts at the company's expense and risk and pass proven programs on to dealers. For example, Exxon experimented with its modernization and retail automation programs extensively before recommending them to dealers. These programs are benefiting dealers and consumers alike. Consumers have more choices in the marketplace, cleaner, more modern facilities at which to shop, and up-to-date technological advances for added convenience. Retail divorcement would prevent large integrated oil companies from training employees and prospective dealers in proven consumer-oriented operating procedures at company operated stations. It would mean Exxon could not operate a station temporarily in order to continue serving the consumer when a dealer leaves unexpectedly, nor would company operated stations be there to set consistent and high standards for service and appearance for all operations.

OPEN SUPPLY

NOT IN THE CONSUMER'S BEST INTEREST

The open supply provision of S1140 says that an Exxon dealer buying only 70% of his gasoline from Exxon has the right to represent himself as an Exxon dealer. This could alter the way gasoline is sold and lead to the end of branded gasoline marketing. Since Exxon dealers would be allowed to purchase up to 30% of their total gasoline needs from a source other than Exxon, the consumer may become confused and perhaps purchase non-Exxon gasoline with the intent of buying an Exxon product. This would raise the question of the integrity of a branded product, and jeopardize the Exxon trademark. If multi-brand stations become commonplace, the branded image would be weakened and would diminish the incentive to build new stores, modernize existing ones, or to maintain the marketing system essential to support a branded marketing program. If branded marketing were eliminated, dealers would no longer enjoy the assurance of quality products, extensive advertising programs, or other services provided by their branded supplier. Consumers could no longer choose the branded offering and expect the convenience of credit cards offered by most major oil companies, the convenience of a recognizable facility, and the quality assurance associated with branded products. Consumer interest in branded product quality assurance has increased sharply in recent years with increased automobile prices, higher compression ratios and the increased availability of alcohol blended fuels.

SUMMARY

In summary, S1140 is not needed since the alleged reasons for the bill are unfounded. Ample evidence exists that large, integrated refiners are not forcing dealers out of business in order to operate their stations directly and that refiners do not use predatory pricing or other unfair practices. Existing antitrust laws provide adequate protection.

In addition to being unnecessary, S1140 would reduce competition and would be contrary to consumer interests. As suggested by government, academic, and industry spokesmen, the removal of refiner-operated stations from the marketplace undoubtedly would result in higher prices and fewer choices available to the consumer. Studies have shown this to have been the case in Maryland. Product quality assurance, high standards of service and workmanship, and the availability of the oil company credit card would be jeopardized to the detriment of the consumer.

S1140 should not be passed because it is not needed, is discriminatory and anticompetitive, and is contrary to consumer interests.

SUPPLEMENTAL STATEMENT OF EXXON COMPANY, U.S.A.

As a result of statements made during the October 9, 1985 hearing on S.1140, Exxon submits this supplemental statement for the hearing record to assure that its policies regarding retail pricing at company-operated service stations and dealer rents are properly reflected and that the issue of concentration and distribution trends in the marketing of motor fuels is correctly described.

During the hearing, comments supporting retail divorcement legislation included statements by current and former Exxon-branded independent service station dealers who indicated that Exxon uses its company-operated service stations unfairly to eliminate dealers from the marketplace. As a matter of record, Exxon markets most of its gasoline through branded dealers and distributors. Less than 10% of Exxon's gasoline sales nationwide are made through company-operated stations. Maintaining a quality brand image requires the establishment and preservation of a mutually beneficial business relationship between Exxon and its branded dealers and distributors. Alleged efforts to use unfair pricing or inequitable rental tactics to drive out of business branded dealers and distributors on which much of Exxon's success depends is without foundation.

Retail Pricing

Retail motor fuel prices observed in the marketplace are a function of a number of variables including the cost of raw materials, the efficiency of the refining operation, the cost of transportation and distribution, the cost of credit, brand value, and the level of competition. Independent service station dealers assess the competitive factors while considering their cost of doing business and their cost of product to determine their markup, or margin, above buying price. In today's marketplace, price competition is typically the most intense in the sale of self service leaded and unleaded regular grades of gasoline. Accordingly, the margins on these sales are relatively low compared to other motor fuel offerings. An appropriate measure of profitability would consider the weighted average margin for all grades of product and service. Based on apparent average margins for 55 cities observed in the September 20, 1985 Lundberg Price/ Margin Report and applying grade ratios based on consumer purchase patterns reported in the NPD AUTO-FACTS Motor Fuels Index, recent weighted average margins by city range from about 9 to 23 cents per gallon (Attachment I). Thus, allegations of unfair price competition based on margins of one or two motor fuel offerings are misleading.

Retail prices at each Exxon company-operated station are established by grade, service, and method of payment to meet prices of key competitors in the trade area. As a matter of policy, Exxon does not set retail prices below the Exxon dealer buying price. In addition, no Exxon company-operated store pricing decision is made with the intent to control the retail prices of Exxon dealers or the market. There have been isolated occasions where Exxon's retail prices at a station have been inadvertently set incorrectly; however, these errors were quickly corrected when brought to Exxon's attention.

Rent

During the hearing, it was alleged that refiners use excessive rent increases as a means to force dealers out of business, presumably with the intent of securing the service station for use as a company-operated facility. Although we cannot speak for other companies, this is totally unfounded in the case of Exxon.

Exxon relies heavily upon independent dealers for the distribution of its motor fuel and would have nothing to gain by setting rents at unreasonable levels. To the contrary, Exxon strives to negotiate equitable rents and to encourage the success of its dealers. Exxon's rental objective is to achieve an acceptable competitive real estate rate of return, after maintenance and taxes, on the market value of our real property leased to dealers. However, if the business value of the station will not support the proposed rent, Exxon will seek to negotiate a rent which reflects the inability of the dealer's business to support market value rent. Currently, Exxon dealer rents yield, on average, less than 8% of the property value, maintenance and taxes. This is about half of what would be considered a competitive rate of return on real estate required by real estate investors.

Some have expressed concern that dealers are not given reasonable notice as to when and what future rent increases will be. Exxon dealer leases, which are for a three-year term, specifically provide the dealer with the maximum amount that Exxon will increase the rent during the second and third year of the lease term. In addition, Exxon dealers are given a copy of the new lease for review about 120 days before the renewal date.

If a dealer believes the rent level would force him out of business, he may make his concerns known to his Exxon sales representative and area sales management and attempt to negotiate a mutually satisfactory rental. If a dealer is unable to reach accord over the rental issue with local area sales management, he may seek a review with Exxon's regional sales management and, if necessary, with Exxon's Headquarters management. Lease agreements also provide the dealer with the opportunity to resolve rental issues through an appraisal process. Exercising the appraisal procedure would involve both the dealer and Exxon securing an independent appraisal of the market value of the property. In most cases, the average of the two appraisals would serve as the basis for the new rent. Additionally, a dealer may terminate a lease agreement at any time upon written notice to Exxon.

Marketing Concentration

With decontrol of prices in 1981, some suppliers elected to withdraw from certain markets due to their inability to efficiently compete in a particular area. These withdrawals have not produced any apparent adverse supply conditions. In each case where a withdrawal has occurred, competitors with more favorable economic factors have moved in to assume the business previously conducted by those companies.

Some believe that market withdrawals and recent merger activity in the petroleum industry contribute to a higher degree of concentration in the marketing of motor fuels to the detriment of consumers' interests. We are unaware, however, of any detrimental effect that such activity may have imposed on consumers,

Further, a statement made at the October 9 hearing that the top four oil companies control over 80% of the gasoline market in states such as West Virginia, Vermont, Delaware, and Ohio appears to be incorrect. According to 1984 data from Lundberg Survey, Inc. (Attachment II), none of the 48 contiguous states have a market share concentration for the top four firms which approaches the 80% level. Only the state of Montana has a concentration greater than 60%.

Concentration in U.S. motor gasoline sales has actually declined between the period of 1954-1984. In 1954, the estimated percent of national market share of the top four and top eight refiners was 31 percent and 54 percent, respectively. According to information from the Lundberg Survey, the national market share for the top four and top eight firms in 1984 was 27 percent and 48 percent, respectively, with no single company having a market-share greater than 7.4%.

Product Distribution Trends

Refiners have traditionally used several different channels for distribution of their products. Their options include marketing through company-operated stations, through directly supplied dealers, and through wholesalers or jobbers who in turn may distribute through their own company-operated stations or through dealers.

According to the 1984 U.S. Department of Energy report titled Deregulated Gasoline Marketing, the gasoline volume share of the 28 largest refiners sold directly to end-users and through company-operated stations from 1972 to 1979 remained virtually unchanged. Refiner sales to retail service station dealers declined about 12% while sales to wholesale jobbers and unbranded independent marketers increased by almost the same amount.

Although the number of dealer-operated stations declined by about 50% from 1972 to 1980 while the number of company-operated stations increased slightly, the motor fuel market share of company-operations versus dealer and jobber outlets remained almost unchanged. This led the DOE to conclude that company-operated stations are not the primary cause, if a cause at all, in the demise of lessee dealer operations, and that data "conclusively demonstrated that refiners were not engaged in a predatory pricing campaign designed to drive their lessee dealers out of business." Further, it stated that "Most of the changes in the gasoline market during the 1970's were the result of the distortions created during the more than a decade of government regulations and changes in the economics of gasoline marketing." More recent information from the DOE shows the distribution of gasoline by class of trade to be relatively stable between 1982 and 1983. The percentage for each class in 1983 is shown below:

Class of Trade		Percent of Volume
Distributors		47
Dealers		33
Company-Operated Stations		13
Industrial or Commercial		7
	Total	100

Concern has been expressed that with the service station population trending toward self-service gasoline facilities, consumers may eventually find few stations which offer automotive repairs or emergency help. Exxon believes that the automotive service and repair needs of consumers can and will be met in a free market economy.

The decline in the number of service stations and the increase in self-serve gasoline facilities is responsive to changing consumer preferences. Although the number of bays at service stations has declined, this has been more than offset by an increase of bays at specialty repair shops and independent repair garages and body shops that perform automotive repair and service work. As a result, the decline in the number of service station bays has had no significant effect on the availability of automotive maintenance and repair services. According to the Automotive Parts and Accessories Association (APAA), the total number of bays available at all types of vehicle service facilities is increasing. The APAA estimates the total number of service bays to be 981,300 in 1983, up from 973,700 in 1979.

ATTACHMENT I

GASOLINE WEIGHTED AVERAGE MARGINS

CITY	¢/GALLON
ANCHORAGE, AK	18.45
ATLANTA, GA	19.71
BAKERSFIELD, CA	13.07
BIRMINGHAM, AL	18.99
BOISE, ID	15.05
BURLINGTON, VT	9.79
CHARLESTON, SC	13.23
CHEYENNE, WY	13.10
CINCINNATI, OH	13.11
DALLAS, TX	16.93
DETROIT, MI	14.60
FRESNO, CA	15.84
HONOLULU, HI	16.84
JACKSON, MS	23.34
JACKSONVILLE, FL	16.56
KANSAS CITY, MO	22.43
LAS VEGAS, NV	14.70
LONG ISLAND, NY	8.53
LOS ANGELES, CA	12.81
LOUISVILLE, KY	13.98
MANCHESTER, NH	10.62
MEMPHIS, TN	16.76
MIAMI, FL	16.71
MILWAUKEE, WI	16.40
MINNEAPOLIS, MN	19.40

NEW HAVEN, CT	12.79
NEW ORLEANS, LA	17.68
NEWARK, NJ	13.57
OMAHA, NE	16.90
PHILADELPHIA, PA	11.80
PHOENIX, AZ	14.54
PITTSBURGH, PA	11.03
PORTLAND, ME	13.01
PORTLAND, OR	17.27
PROVIDENCE, RI	13.93
RENO, NV	14.28
SACRAMENTO, CA	14.98
SALT LAKE CITY, UT	12.58
SAN DIEGO, CA	14.53
SAN FRANCISCO, CA	15.50
SEATTLE, WA	14.95
SIOUX FALLS, SD	12.23
SPOKANE, WA	13.36
STOCKTON, CA	14.80
TAMPA/ST PETE, FL	17.56
TUSCON, AZ	13.14
TULSA, OK	17.23
WASHINGTON, DC	15.51

SOURCE: LUNDBERG PRICE/MARGIN REPORT, SURVEY OF SEPTEMBER 20, 1985
NPD AUTO-FACTS MOTOR FUELS INDEX

ATTACHMENT II

GASOLINE MARKET SHARE CONCENTRATION (%)
1984

	TOP 4 FIRMS	TOP 8 FIRMS
ALABAMA	38	60
ARIZONA	56	83
ARKANSAS	32	51
CALIFORNIA	59	82
COLORADO	34	54
CONNECTICUT	45	67
DELAWARE	59	85
FLORIDA	36	59
GEORGIA	38	56
IDAHO	35	53
ILLINOIS	43	61
INDIANA	45	58
IOWA	40	51
KANSAS	33	50
KENTUCKY	48	62
LOUISIANA	48	65
MAINE	57	76
MARYLAND	50	71
MASSACHUSETTS	42	67
MICHIGAN	38	52
MINNESOTA	42	57
MISSISSIPPI	37	59
MISSOURI	35	53
MONTANA	66	87
NEBRASKA	33	39
NEVADA	48	68
NEW HAMPSHIRE	46	69

NEW JERSEY	43	68
NEW MEXICO	34	50
NEW YORK	38	54
NORTH CAROLINA	40	56
NORTH DAKOTA	52	62
OHIO	57	74
OKLAHOMA	33	50
OREGON	60	87
PENNSYLVANIA	52	80
RHODE ISLAND	51	79
SOUTH CAROLINA	39	58
SOUTH DAKOTA	47	57
TENNESSEE	43	67
TEXAS	49	68
UTAH	37	61
VERMONT	40	42
VIRGINIA	43	65
WEST VIRGINIA	41	49
WASHINGTON	49	75
WISCONSIN	31	45
WYOMING	43	55

SOURCE: LUNDBERG SURVEY INC.